IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI ON THE 23RD DAY OF MAY, 2023, BEFORE HER LADYSHIP AFIA N. ADU-AMANKWA (MRS.) J.

SUIT NO. E3/7/18

RICHARD OWUSU ACHIAW **PLAINTIFF**

VRS.

1. UPTOUCH CONSULT LTD **1ST DEFENDANT**
2. SAIWEST LTD **2ND DEFENDANT**

JUDGMENT

Per his amended writ of summons filed on 10th October, 2019, the plaintiff has sued the defendants jointly and severally for damages for the wrongful termination of his employment contract. The plaintiff's case is that the 1st defendant recruited him to work for the 2nd defendant on the Takoradi-Tema Interconnection Project (TTIP) as the Coating Painting Quality Control Supervisor for a period of twelve(12) months. According to him, the defendants have terminated his employment contract based on the actions of one Fabio Italiano, an employee of Desimone Ltd. Recounting the incident leading to the termination of his contract, the plaintiff averred that on 5th June, 2018, Fabio Italiano walked out of his office, shouted and rained insults on him and his colleagues at work and behaved aggressively towards them. He reacted by walking away from the said Fabio Italiano.

As was expected of the defendants, they denied the plaintiff's claims. The 1st defendant stated that on 6th June, 2018, she received a report of misconduct on the plaintiff's part. Having investigated the allegation, it was established that the plaintiff had misconducted himself by exhibiting gross insubordination in the

course of his employment towards the project manager, Fabio Italiano. By virtue of this, she terminated the plaintiff's employment in accordance with the terms and conditions of his employment contract.

The 2nd defendant has denied any relationship, employment or otherwise, between her and the plaintiff. Her case is that the 1st defendant was an independent contractor who supplied her with labour services, including the plaintiff. At all material times, the plaintiff remained an employee of the 1st defendant. According to her, for reasons including the need to reinforce transparency and confidence in her dealings with the 1st defendant, the 1st defendant agreed with her to negotiate the plaintiff's salary with him. However, the ultimate decision on any negotiated amount rested with the 1st defendant as the plaintiff's employer. She further stated that due to several acts of misconduct on the plaintiff's part, and the general apathy he displayed in his work, which was generally unsatisfactory, she made reports to the 1st defendant as the plaintiff's employer. She also discussed with the 1st defendant, who confirmed that the plaintiff's employment was not unfairly terminated. The plaintiff had been paid his accrued benefits upon the termination of his employment.

The following issues were set down for trial at the application for directions:

i. Whether or not the plaintiff was an employee of 1st defendant or 2nd defendant.
ii. Whether or not the plaintiff misconducted himself at work.
iii. Whether or not the plaintiff's contract of employment was wrongly terminated by the defendants.
iv. Whether or not both defendants are jointly liable to the plaintiff's claim.
v. Whether or not the plaintiff is entitled to his claim.

BURDEN OF PROOF

The rule of evidence is that a party who bears the burden of proof or burden of persuasion in a case must produce relevant evidence to convince the trier of facts of the merits of his case. In a civil action, the burden of persuasion may require a party to establish the existence or non-existence of a fact by a preponderance of the probabilities. See **section 10(2) of the Evidence Act, 1975, NRCD 323.** This burden would require a party to call material witnesses or lead cogent evidence to establish his case. Thus, in the case of **Ackah vrs. Pergah Transport Ltd. & Others [2010] SCGLR 728 at page 731**, the Supreme Court held as follows:

> *"It is the 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 testimony of the parties and material witness, 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 matters that are capable of proof be proved by producing sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is a requirement of the law on evidence under Sections 10(1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD323)"*

This being an action for wrongful dismissal of employment, the plaintiff assumes the burden of proving the terms of his employment and how the dismissal is in breach of the terms of his employment. Where a plaintiff fails to satisfy the court on these points, his claim must fail. In the case of **Tagoe vrs. Accra Brewery Ltd [2016] 93 GMJ 103 @ 123,** the Supreme Court stated thus:

"…in a claim founded on wrongful termination of employment contract, the plaintiff assumes the initial burden of producing evidence to satisfy the court about his terms of employment and that the termination of his appointment was contrary to terms of his appointment or existing law. The Defendant would then be obliged to produce evidence to justify the termination".

The defendant is under no obligation to prove anything. The burden only shifts to the defence to provide sufficient evidence to tip the scales in his favour when the plaintiff leads some evidence to prove his claim on a particular issue. If the defendant succeeds in doing this, he wins; if not, he loses on that particular issue. See **Ababioh vrs. Akwasi III [1994-95] GBR 774 at 775** and **Bank of West Africa vrs. Ackun [1963] 1 GLR 176**.

MERITS

In his statement of claim, the plaintiff averred that the 1st defendant recruited him to work for the 2nd defendant. However, in his reply and during the trial, he was emphatic as to the fact that the 2nd defendant and not the 1st defendant was his employer. In spite of this, the plaintiff sued both defendants jointly and severally for wrongfully terminating his employment contract. The plaintiff argues that the 2nd defendant is his employer despite the employment contract he entered into with the 1st defendant. According to him, that contract was only for the 1st defendant to manage him as a consultant for the 2nd defendant. Whilst the 1st defendant contends that the plaintiff is her employee, the 2nd defendant argues that there is no relationship between her and the plaintiff for which the plaintiff can describe himself as her employee.

On the issue of whether the plaintiff was an employee of the 1st or 2nd defendant, the plaintiff testified that he was an Offshore Painting Supervisor at Modec Production Services in Ghana. Recounting how he entered into an employment agreement with the 1st defendant, the plaintiff testified that his professional

contact from Nigeria, LinkedIn sent him a message through his LinkedIn Profile to ask him if he was interested in an upcoming Siawest project in Takoradi and Tema termed the Takoradi-Tema Interconnection Project (TTIP Project). He answered in the affirmative and followed up with a phone call concerning the job. His contact said he would pass on his details to the 2nd defendant, which he did. He received a phone call and an email from the 2nd defendant to schedule an interview at the 2nd defendant's office in Accra. He attended the interview with the 2nd defendant conducted by Anglo Cammarota(QAQC manager) and Ariadne Snowden (Human Resource Officer) of the 2nd defendant company. After the interview, he received another email from Ariadne Snowden on behalf of the 2nd defendant to come for an aptitude test and a further interview with Davide Galiza, the Human Resource manager of the 2nd defendant. After that was completed, David followed it up with a salary negotiation to determine his salary and a verbal employment agreement was reached between him and the 2nd defendant acting through her Human Resource manager and him. All the interview processes were conducted at the head office of the 2nd defendant without the 1st defendant's involvement. Subsequently, the 2nd defendant followed it up with a written offer detailing his salary and allowances, which were emailed to him. After a successful interview at the 2nd defendant company, he was scheduled for a medical evaluation at West Africa Rescue Association (WARA) via email communication from the 2nd defendant. Before his medicals at WARA, he was asked to commence work immediately after the medical evaluation if he succeeded with the medicals. On his way from the medicals at WARA to commence work at the 2nd defendant company, he received a call from Mrs. Doris Darkwahene Ababio, who introduced herself as the manager of the 1st defendant company. She informed him that she had received his contact details from the 2nd defendant, and the 1st defendant was going to manage him on behalf of the 2nd defendant. She also told him that she would send him a contract via email. After receiving the call and on reaching the 2nd defendant's

premises, he went to see Davide Galiza in connection with the phone call from the 1st defendant's company. The HR manager told him that the 1st defendant managed most of the 2nd defendant's workers, especially those on contracts and projects. He further informed him that as part of the modalities and procedures of the 2nd defendant, he had to sign the contract with the 1st defendant, who was acting on behalf of the 2nd defendant, which he did. The contract was for twelve months commencing from 14th February, 2018.

Mrs. Doris Darkwahene Ababio, the managing director of the 1st defendant company, testified for the 1st defendant. She described the plaintiff as a contract employee of the 1st defendant company. According to her, the 1st defendant was a Human Resources and Administrative Support Services Provider, a Recruitment Agency and a Licenced Private Employment Agency of the Labour Office. The 2nd defendant was one of the 1st defendant's clients as a Human Resource Service provider. The 1st defendant engaged the plaintiff for a one-year fixed contract effective 14th February, 2018 to work for the 2nd defendant as a Coating Painting Quality Supervisor on the Takoradi-Tema Interconnection Project (TTIP) undertaken by the 2nd defendant, of which one Fabio Italiano was the Project Manager.

Ben Fredj Maher, the area manager in charge of offshore human resources of the 2nd defendant, testified for the 2nd defendant. He testified that the 2nd defendant was an engineering and construction company in the oil and gas upstream industry. On or about 18th January, 2018, the 2nd defendant and the 1st defendant entered into a contract by which the 1st defendant was to supply labour services to the 2nd defendant. Under the contract, the 1st defendant was to supply outsourced employees to the 2nd defendant at her project site. One of those outsourced employees was the plaintiff, who was to be physically present to render the required services. The plaintiff's designation was to be a supervisor in charge of coating, painting and quality control in relation to the project. The

plaintiff's status as an employee of the 1st defendant was regulated under terms and conditions negotiated between him and the 1st defendant, his employer. At all material times, the implementation of the employment contract was the sole responsibility of the parties, being the 1st defendant and the plaintiff. To engender the necessary confidence in the plaintiff as to the cost of services to be supplied by him and the commitment of the 2nd defendant to pay such costs to the 1st defendant as would be required, it was decided that the 1st defendant would facilitate for the plaintiff to meet with the 2nd defendant, to directly discuss the cost of services which the 2nd defendant was going to pay to the 1st defendant towards settling the plaintiff. The 1st defendant, at all material times, operated as an independent contractor to supply the relevant labour services required by the 2nd defendant through her employees, including the plaintiff. The 1st defendant's obligation included deploying the plaintiff to the 2nd defendant's site and work premises to carry out his specific responsibilities. Regarding billing for services supplied, the 1st defendant raised her own invoices for the labour services supplied by the plaintiff. The invoices were submitted to the 2nd defendant, who paid the relevant amount directly to the 1st defendant for the services supplied. In consideration of the payments to be made, the 2nd defendant was to receive good quality services from the 1st defendant, who was responsible for ensuring that the plaintiff was delivering the requisite quality of services needed by the 2nd defendant. The 1st defendant was to also ensure that the plaintiff was conducting himself satisfactorily in order to avoid causing rifts and chaos at the project site as the occurrence of any such events would slow down work, negatively impact the 2nd defendant's ability to complete the project within the given time frame and also affect the overall quality of work. This was especially so as the plaintiff's designation and work schedule revolved around quality control. As an independent contractor, the 1st defendant retained responsibility for control over the plaintiff's activities, including ensuring that the plaintiff conducted himself satisfactorily, in such a manner so as not to pose threats to the healthy and safe

working environment at the project site, and also, ensuring that, generally, the plaintiff's action posed no risks to the smooth operation of the 2nd defendant in delivering the project. The 2nd defendant, as the recipient of the services being provided, was entitled to demand the plaintiff's adherence to protocols such as respect for hierarchy so as not to disturb the conducive working atmosphere at the site and, in particular, not to act to poison the healthy and safe working environment required to facilitate the smooth flow of work. At all material times, the plaintiff was aware that if the 2nd defendant did not meet the project completion date due to inaction or actions on his part, the 2nd defendant would suffer delayed damages to be imposed by the owner of the project. The 2nd defendant, if confronted with any acts of insubordination by the plaintiff on his job or any unsatisfactory conduct, was entitled to draw the attention of the 1st defendant to the situation for the 1st defendant to take the necessary remedial action to facilitate the restoration of normalcy at the project site. As with any other person present on the 2nd defendant's premises and project site, whether or not as carrying out any specified activities, the plaintiff was to conduct himself in accordance with the relevant protocols and procedures put in place by the 2nd defendant, primarily in its capacity as the person with oversight over persons present at the premises and project sites, to facilitate effective coordination of activities ongoing at its premises and project sites. At all material times, when the plaintiff carried out his assigned tasks, the plaintiff remained an employee of the 1st defendant, who exercised control over the plaintiff by virtue of her position as an employer, subject to the employment contract between the plaintiff and the 1st defendant.

The parties tendered in evidence as exhibits "F", "1" and "5", the employment contract between the plaintiff and the 1st defendant. For purposes of this judgment, it would be referred to as exhibit "F", given that they are the same. The employment contract spelt out the terms governing the relationship between the plaintiff and the 1st defendant. Exhibit "F" was a one-year contract, with the first

three months representing the probationary period. By the terms of the contract, the plaintiff's salary was the salary offer as agreed between him and the 2nd defendant. Under the contract, the 1st defendant reserved the right to terminate the plaintiff's appointment for cause or without cause and with or without notice. There was no evidence of a contractual relationship between the plaintiff and the 2nd defendant. However, there was a contract entered into between the 1st and 2nd defendant by which the 1st defendant was to supply outsourced employees to the 2nd defendant at her project site. The 2nd defendant tendered this contract as exhibit "4". By the terms of the contract, even though the 1st defendant was to procure the 2nd defendant with personnel, the 2nd defendant was to conduct the interviews and to negotiate salaries with the successful candidates. Based on this agreement, the 2nd defendant interviewed the plaintiff and negotiated his salary. Again, he underwent his medical assessment at the 2nd defendant's behest. Given that the 2nd defendant interviewed him, negotiated his salary with him, conducted his medical test and provided him with Personal Protective Equipment(PPE), the plaintiff contends that the 2nd defendant is his employer.

Whether an employment relationship is one of a contract of service or for service is not cast in iron but is dealt with on a case by case basis. Whether the servant has agreed to render his services in consideration for a salary and whether, in the performance of such service, he is subject to the other's control are some of the indices to look out for to determine if the employment relationship is one of a contract of service or for service. The criteria used in a particular case may not necessarily be used in another case. Regarding whether a contract was one of service or for service, the Court of Appeal per Georgina Wood JA (as she then was) in the case of **Bernard Kojo Mensah & Anor vrs. Bilton Bogoso Gold Ltd [2002] DLCA6662** stated that:

"The question of whether an employment relationship is a contract of service or for service is a question of mixed fact and law and is dealt with on a case by case basis. No one single test is decisive. Many factors are therefore taken into account in determining the question, the acid test being that which was advocated in the Ready Mixed Concrete case, I intend to be guided by this basic test…"

In the case mentioned above, the Court of Appeal affirmed the High Court's decision that the respondents, who were security officers in the appellant's company, were the appellant's employees. The appellant had denied the respondents' contention that they were at all material times in her employment. The appellant denied the existence of any legal bond between them and described them as employees of Emanet Services, independent contractors engaged by them to provide security services. The respondents could not produce any appointment letters or contracts of employment with the appellant. But there was evidence that the 1st respondent was employed in 1991 when the independent contractor did not exist and was dismissed when the company had ceased to exist. His payroll also showed that the appellant was paying him. The appellant issued a testimonial, which certified that he was employed and worked for the appellant company from January 1991-June 1996. These facts informed the court that the respondents were the appellant's employees.

In the present case, the plaintiff has an employment contract with the 1st defendant. And by the terms of this contract, the 1st defendant exercises relative control over the plaintiff in that she pays his salary and is at liberty to terminate his appointment at will. By exhibit "1A", the 1st defendant, on 11th May, 2018, confirmed the plaintiff's appointment as a coating, painting quality control supervisor of the 2nd defendant. The fact that the 2nd defendant conducted the interview and negotiated his salary is of no consequence as that was the arrangement between the 1st and 2nd defendants per their contractual

relationship. Moreover, the representative of the 2nd defendant explained that the 2nd defendant intervened at an early stage to determine the suitability of the candidate for the project hence the interview and salary negotiation. Understandably, the 2nd defendant would want to intervene at that early stage as the jobs in question were technical in nature, and she was better placed to conduct the interviews in contrast with the 1st defendant, who was a human resource provider, and who may not have had the technical expertise to determine the suitability of the candidate in question. Exhibit "4" clearly stated that the personnel supplied by the 1st defendant to the 2nd defendant did not become employees of the 2nd defendant but remained employees of the 1st defendant. Thus, for all intents and purposes, the 1st defendant was the plaintiff's employer, not the 2nd defendant.

The plaintiff is literate and voluntarily signed the employment contract. The plaintiff's explanation that:

> *"Prior to signing the contract, my understanding was that I was going to have a direct contract with 2nd defendant and not 1st defendant".*

is untenable. There is no proof that the 2nd defendant represented to him that he was her employee. The plaintiff is deemed to have accepted the 1st defendant's terms when he signed the contract. And per the terms he signed with the 1st defendant, he was her employee. The rule is that when a document containing contractual terms was signed, in the absence of fraud and misrepresentation, a party of full age and understanding was bound to the contract to which he appended his signature. See the case of **Inusah vrs. DHL Worldwide express [1992] 1 GLR 267**. He is estopped from denying that he entered into an employment relationship with the 1st defendant.

The question that begs asking is why the plaintiff has sued the 1st defendant if his case is that the 2nd defendant is his employer. Again, what actions did the 2nd defendant take regarding his employment status with the TTIP Project to warrant

her being sued by the plaintiff? She has no contract with the plaintiff and did not terminate the plaintiff's contract.

On the whole, I hold that the plaintiff is an employee of the 1st defendant and not the 2nd defendant. In the first place, the plaintiff had an employment contract spanning a period of twelve (12) months with the 1st defendant where the plaintiff had agreed to render services for the 2nd defendant at an agreed salary with the 2nd defendant payable by the 1st defendant. By the terms of the contract, the 1st defendant exercised some control over him by paying his salary and by the fact that she could terminate his contract at will. Even though the 2nd defendant participated in the recruitment process, such as conducting his interview, negotiating salary and conducting a medical test, those activities were consistent with the agreement between the 1st and 2nd defendant. At no point was the plaintiff an employee of the 2nd defendant by virtue of these activities carried out by her. As a matter of fact, there was no relationship between the plaintiff and the 2nd defendant. The plaintiff was not coerced into signing exhibit "F". He voluntarily signed the contract and therefore was bound by its terms. There is no relationship between the plaintiff and the 2nd defendant, so the 2nd defendant cannot be jointly liable with the 1st defendant in damages for the wrongful termination of his employment contract.

In his pleadings, the plaintiff did not assign any reasons for claiming damages for the wrongful termination of his employment contract. From his pleadings, what appeared to agitate him was the defendants' termination of his contract because of the conduct of one Fabio Italiano. His agitation did not centre on the conduct or quality of the investigations carried out or that the decision to terminate his contract was not consistent with the outcome of the investigations. Be that as it may, the plaintiff claims that his contract was wrongfully terminated. As I have already stated, the burden lies on him to prove the terms of his contract

and how the termination of his contract was contrary to the terms of his appointment.

The letter terminating the plaintiff's appointment dated 7th June, 2018 was tendered in evidence by the plaintiff and the 2nd defendant as exhibits "G" and "7". In exhibits "G" and "7", the reasons assigned for the termination of the plaintiff's appointment are as follows:

> *"You will recall that during our phone conversation I made you aware that irrespective of whatever provocation, you could have used other acceptable channels to have your grievance heard for redress rather than the outright and open confrontation.*
>
> *3. Further, we are informed that you denied before management at the site that the incident happened only to confirm the following day on the contrary. Such attitude clearly translates into lack of transparency and trustworthiness on your part and cannot be upheld in any refined workplace. Your attitude also borders on disrespect for hierarchy and can be injurious to a healthy and safe working environment, particularly considering the project in view, hence the decision to terminate your contract; we cannot continue to retain you at the site, as part of the team working for our client".*

Thus, the basis for the 1st defendant's termination of the employment contract bordered on her distrust of the plaintiff coupled with his disrespect for hierarchy which conduct she considered to be injurious to a healthy and safe working environment given the project her client was undertaking.

The employment contract (exhibit "F") executed between the plaintiff and the 1st defendant provides in clause 5 as follows:

> *"5. EARLY TERMINATION*

i) This employment may be terminated for cause during the period referred to in paragraph 3(i) above with or without notice or payment in lieu of notice.

ii) Uptouch further reserves the right to terminate the employment at anytime and for any reason in the absence of cause upon two(2) weeks, or payment in lieu of notice in which the employment shall be deemed terminated on the date such payment is made. The employee can also terminate the agreement for any reason by giving similar notice or payment in lieu thereof".

Under the terms of the contract, the parties reserve the right to terminate the contract for any reason, with or without notice. The 1st defendant can terminate the contract without assigning any reasons for her termination, much less to justify the termination. Under common law, parties to an employment contract are at liberty to end the contract in accordance with its terms. This principle has been followed in several cases, such as in the case of **Charles Affran vrs. SG-SSB Ltd [2019] DLSC 6157**. In that case, the Supreme Court held that:

> *"An employer is not really required to give any reasons for the termination. Once the employer complied with section 12 of the Rules and Conditions of Service by giving either one month's notice in writing or one month's salary as lieu thereof, then the termination is not wrongful. At common law, an employer and employee are free and equal parties to the contract of employment. Hence either party has the right to bring the contract to an end in accordance with his terms. Thus an employer is legally entitled to terminate employee's contract of employment whenever he wishes and for whatever reasons provided only that he gives due notice to the employee or pays him his wages in lieu of the notice. He does not even have to reveal his reasons much less to justify the termination".*

However, under the Labour Act, supra, the termination of the employment contract must be based on grounds as provided by the Act. Section 15 of the Act provides that:

> *"A contract of employment may be terminated,*
>
> *(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 if the worker is found on medical examination to be unfit for employment;*
>
> *(e) by the employer because of the inability of the worker to carry out work due to*
>
> *(i) sickness or accident; or*
>
> *(ii) the incompetence of the worker; or*
>
> *(iii) the proven misconduct of the worker.*

Thus, an employer cannot terminate his employee's contract without a reason under the present dispensation. The common law principle which entitled an employer to do that has been overridden by statute, which is the Labour Act, supra. The well-established principle is that where common law conflicts with the terms of a statute, the statute should prevail. See the case of **Ghana Commercial Bank Ltd., High Street, Accra vrs. The Commissioner, CHRAJ Old Parliament House, Accra [2003] DLSC2387**. Thus, the reasons assigned by an employer for the

termination of his employee's contract must be consistent with those enumerated under the Act.

The reasons assigned by the 1st defendant for her termination of the plaintiff's contract were her distrust of him and his disrespect for authority (insubordination on the plaintiff's part). Disrespect or insubordination is improper behaviour which is misconduct. Black's Law Dictionary defines misconduct as:

> "*A dereliction of duty; unlawful or improper behaviour*".

On what constitutes misconduct, the case of **Pearce vrs. Foster (1886) 17 QBD 536**, held that:

> *"If a servant conducts himself in a way inconsistent with faithful discharge of his duty in a service, it is a misconduct which justifies immediate dismissal. That is misconduct according to my view need not be misconduct carrying of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interest or to the reputation of the master and the master will be justified not only if he discovered at the time but also if he discovers afterwards in dismissing that servant*".

Thus, misconduct is behaviour that is inconsistent with the employee's obligations or duties, or a breach of company policy or generally unacceptable or improper behaviour. If the employee conducts himself, which is inconsistent with the faithful discharge of his obligations and duties, then that conduct is misconduct. Under the common law and the Labour Act, supra, misconduct can ground the termination of an employee's contract.

The plaintiff has denied any misconduct on his part warranting the termination of his contract. The 1st defendant thinks otherwise. The issue before the court is whether the evidence presented before the 1st defendant was reasonably

capable of supporting her decision to terminate the plaintiff's contract on grounds of misconduct. This would entail the question of whether the plaintiff misconducted himself.

The plaintiff testified that on 5th June, 2018, he was asked to inspect a civil construction concrete sample work done by Desimone Ltd for the 2nd defendant. He went to the office of Desimone Ltd., which was also situated at the TTIP project site (Aboadze site). While waiting for the QAQC personnel for Desimone Ltd outside their office container, he received a phone call from a family member. Whilst talking on the phone, a man named Fabio Italiano angrily walked out of his office and yelled at him that he was making noise and was "*talking like a parrot eating garbage*". He dropped the call and questioned Fabio on why he had described him as such. In an angry mood, Fabio continued to yell at him and uttered some words, "porco porco bastardo" in Italian, which meant bastard pig. He explained that he understood the Italian language by virtue of his previous working experience with Italians. According to the plaintiff, he reacted by snubbing Fabio angrily and walking away. The following day after the incident, he had a call from Anglo Cammarota, who was his manager, to come to the office. He then discussed the incident with Fabio Italanio and wanted to know what happened. He explained to him what had transpired. Anglo asked him whether he understood those words, and he said he did. He was also asked whether he was offended by those words and answered in the affirmative. He was then asked to continue with his work which he did. On 7th June, 2018, he received a call from Mrs. Ababio. She asked him what had transpired, and he explained it to her. He did not hear anything on the issue until 8th June, 2018, when he received a call from Mrs. Doris Ababio terminating his employment with immediate effect and to vacate his post. He asked the QAQC manager of the 2nd defendant if it was so since the 2nd defendant was his employer, and he confirmed same. He vacated his post and left. Later he received a termination letter via email.

The 1st defendant's representative testified that on 6th June, 2018, the 1st defendant received a report of misconduct on the plaintiff's part from Fabio Italiano. She called the plaintiff on telephone to ascertain the truth or otherwise of the report she had received. The plaintiff was insolent on the phone and told her that Fabio had insulted him in Italian, which is why he insulted him back. Upon full-scale investigations by the 1st defendant through her and hearing the parties involved, that is, the plaintiff and the project manager, Fabio Italiano, it was established that the plaintiff had misconducted himself by exhibiting gross insubordination during his employment towards Fabio Italiano. She further recounted that in the course of investigations, the plaintiff did not show any remorse for his conduct and even authored words to her to show his intransigent stance on the issue to wit:

> *"As for me I am a Christian but even if Jesus Christ comes down from heaven to tell me something unpleasant. I'll give it to him. I'll tell him my piece of mind."*

Considering the plaintiff's posture on the issue in question, the critical nature of the project, which dealt with gas and serious heavy machines and the national character of the project with World Bank support, the plaintiff's employment was terminated in accordance with the terms of his contract. She explained that gross insubordination, such as exhibited by the plaintiff to a project manager, was likely to disturb the peaceful working environment of the project, where the slightest mistake could cause severe damage to both life and property. She further stated that the 1st defendant paid him his duly entitled benefits upon terminating his contract.

The 2nd defendant's representative testified that the plaintiff had become generally apathetic in his work, which the 2nd defendant found unsatisfactory. As the plaintiff's work was, in essence, part of the input into the large work being done, the unsatisfactory behaviour of the plaintiff affected the effective flow of

work, in general, such that other persons got affected. According to him, he was aware that there were issues between the plaintiff and one Fabio Italiano, an employee of one of the subcontractors (DeSimone) who the 2nd defendant had engaged on the site. The plaintiff verbally abused Fabio Italiano resulting in Fabio writing a complaint on 5th June, 2018 to the 2nd defendant on the plaintiff's unacceptable behaviour towards him. When the 2nd defendant received the complaint letter, it realized that the letter had the name "Robert Achaa" instead of "Richard Owusu-Achiaw". The 2nd defendant, aware that the QA/QC officer was not called Robert Achaa, followed up with Fabio Italiano to confirm whether the complaint was against the plaintiff, Richard Owusu-Achiaw. Fabio Italiano clarified that he referred to the plaintiff, Richard Owusu- Achiaw. The reference to "Robert Achaa" was intended to reference the plaintiff, the QA/QC officer on the project. After Fabio's clarification, the 2nd defendant informed him that the plaintiff was an employee of the 1st defendant. Fabio Italiano went on to report the incident to the 1st defendant. The 2nd defendant then discussed with the 1st defendant the need to ensure that all disagreements involving the plaintiff and other persons on the project be handled carefully to remove any risk to the project that disputes may bring about. The 1st defendant investigated the incident between the plaintiff and Fabio Italiano. After completing her independent investigations, the 1st defendant found that the plaintiff had engaged in unsatisfactory conduct and took action in accordance with the employment contract she had with the plaintiff. He explained that under the arrangement for supply of outsourced employees, the 2nd defendant, while it was bound by the terms of the agreement with the 1st defendant for the supply of labour services, was not bound to continue accepting services from the plaintiff in particular. The ultimate decision as to whose employment the 1st defendant terminated, and replaced or hired to carry out work for the 1st defendant, always rested with the 1st defendant, who was responsible for such decisions as the supplier of the outsourced employees required by the 2nd defendant. In the 2nd defendant's

interaction with the 1st defendant after the termination, the 2nd defendant obtained assurance that the plaintiff was paid his accrued benefits on the termination of his employment.

Whilst Mrs. Ababio recounted that the plaintiff admitted to insulting Fabio in retaliation to Fabio's insult to him, the plaintiff claims to have been insulted by Fabio and reacted by snubbing him and walking away. It would be noted that there was no corroborative evidence of the parties' account. Thus, it is Mrs. Ababio's word against the plaintiff's. However, given the consistency in her case, I am more inclined to lean to her version of events than the plaintiff. In paragraph 6 of his amended statement of claim, the plaintiff averred that:

> *"..on the 05/06/2018, one man by name Fabio Italiano who works for Desimone Ltd walked out from his office, shouted and rained insult on the Plaintiff and some other colleagues at work and subsequently behaved in an aggressive manner towards them".*

By this pleading, one would have expected the plaintiff to call any of his colleagues who was present that day to corroborate his story. However, in his testimony in court, he testified that he was the only person around. Clearly, the plaintiff had led evidence which was inconsistent with his pleadings. In **Appiah vrs. Takyi [1982-1983] GLR 1,** the Court of Appeal held that:

> *"Where there was a departure from pleadings at a trial by one party whereas the other's evidence accorded with his pleadings, the latter's was as a rule preferable".*

Given the inconsistency in his case, the 1st defendant's version of events are much more preferred. Moreover, Mrs. Ababio appeared to me as a credible and reliable witness, and I have no reason to disbelieve her story.

According to Mrs. Ababio, the plaintiff told her he had been insulted by Fabio but did not give her the particulars of the insult. It was in court that she learned from

the plaintiff that Fabio had insulted him to wit, "*talking like a parrot eating garbage*". She was emphatic in her testimony that the plaintiff had said he also insulted Fabio. She further testified that during their interaction, the plaintiff was insolent on the phone and remarked that even if Jesus Christ told him something unpleasant, he would give it to him, that is, to give him a piece of his mind. If Jesus could be the subject of the plaintiff's insults if he dared crossed his path, then it is very probable that he could have insulted Fabio, a mere mortal as himself, who dared insult him.

The plaintiff claims he did not insult Fabio but angrily snubbed him and walked away. In his amended statement of claim, he averred that he walked away. That would have been the proper approach if he had been insulted by Fabio and then proceeded to lodge a complaint against him. But he did not just walk away but snubbed Fabio as well. A snub in itself is an insult. "Snub", as defined by the **Second College Edition of Webster's New World Dictionary at page 1350,** means:

> "*1. To check or interrupt with sharp and slighting words, 2. To treat with scorn, contempt or disdain*".

The plaintiff's retaliation to Fabio's insult to him, either by insulting or snubbing him, was not the proper course of action. On the whole, I believe that the plaintiff insulted Fabio back when he insulted him. The 1st defendant contends that the plaintiff's behaviour amounted to insubordination as he had disrespected his boss. The plaintiff denies that Fabio was his boss. Evidence on record shows that Fabio was an employee of Desimone, one of the subcontractors the 2nd defendant had engaged on site. The 1st defendant's representative testified that Fabio was the project manager, Takoradi-Tema Interconnection Project (TTIP). In exhibit "6", which is Fabio's complaint of the plaintiff's attitude to the 2nd defendant, he signs off the letter as the project manager confirming the testimony of the 1st defendant's representative that he was the project manager. There was no proof that, as project manager, the plaintiff was subordinate to him. However,

whether Fabio was his boss or colleague, the fact still remains that insulting a colleague or a boss at work is improper behaviour. The 1st defendant's representative believed that the plaintiff's insubordination to Fabio was likely to disturb the peaceful environment of the project. In exhibit "6", Fabio had threatened to order his staff to stay away from the plaintiff. Given that it was a national project involving heavy machinery, a peaceful environment was needed to carry out the project. Friction among the workers was the last thing the 1st defendant needed. Thus, the 1st defendant cannot be faulted for terminating the contract as the plaintiff's conduct was not in her best interest. She risked losing the 2nd defendant as a client as the plaintiff's presence at the site could create rancour between the workers and disturb the peaceful environment needed to carry out the project effectively. In essence, the plaintiff's conduct was likely to be prejudicial to the 1st defendant's interest, hence her decision to terminate his contract. I find as a fact that the plaintiff misconducted himself, and the 1st defendant was justified in terminating his contract based on the misconduct.

The 1st defendant terminated the employment contract without any notice to the plaintiff. His employment contract envisages termination without notice. Under his employment contract, the 1st defendant reserves the right to terminate the employment at any time upon two weeks' notice or payment in lieu of notice. The 1st defendant's representative indicated that upon terminating his contract, she paid him his duly entitled benefits. The plaintiff confirmed this fact.

From the evidence adduced on record, the plaintiff misconducted himself whilst in the 1st defendant's employ. He has failed to show that the 1st defendant's termination of his appointment was unlawful. The 1st defendant's termination of the plaintiff's appointment was lawful and in accordance with the terms of employment reached between them. In the circumstances, the plaintiff's claims are dismissed.

(SGD.)
H/L AFIA N. ADU-AMANKWA (MRS.)
JUSTICE OF THE HIGH COURT.

COUNSELS

J. E. Abekah appears for the Plaintiff.
Amy Bondzie-Hanson(holding Constantine Kudzedzi's brief) appears for the 1st Defendant.
Joseph Dzakpasu with Eyiram Galley (holding Benjamin K. Sackar's brief) appears for the 2nd Defendant.