IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - AD 2021

CORAM: APPAU, JSC (PRESIDING)

PWAMANG, JSC

PROF. KOTEY, JSC

LOVELACE -JOHNSON (MS.), JSC

AMADU, JSC

CIVIL APPEAL
NO. J4/1/2020

24TH MARCH, 2021

1. ABUBAKARI UMAR
2. MOHAMMED HAFIZ

PLAINTIFFS/APPELLANTS/ APLLELLANT

VRS.

NATIONAL HEALTH INSURANCE AUTHORITY ……. DEFENDANTS/RESPONDENTS/ RESPONDENTS

J U D G M E N T

LOVELACE-JOHNSON (MS), JSC: -

This is an appeal against the judgment of the Court of Appeal dated 11th May 2018 by which the said court upheld the appeal of the appellants in part and made an order granting them their earnings from October 2012 to April 2014.

At the high court, the appellants had sought an order directing that their names be restored to the respondent's payroll, recovery of their unpaid salaries for a stated period, interest on these salaries up to the date of the said restoration and general damages.

The respondents had denied their claim and also counterclaimed for certain reliefs.

The gist of the plaintiff's case at the high court was that having been employed by the respondents on 9th April 2012, they received their salaries from that date till May 2014 when these salaries were stopped. All efforts for this situation to be rectified were unsuccessful. They stated that they suffered hardship and inconvenience as a result of this state of affairs.

It was the high court's refusal of their claim and the grant of the respondent's counterclaim which led to the appellant's appeal to the court of appeal. Still dissatisfied with the outcome at that forum, they have launched the present appeal on the following grounds

(a) The court of appeal erred in law and occasioned a miscarriage of justice when it dismissed the Appellants claim for the restoration of their names unto the Respondents' workers' pay roll having found that the Respondent was estopped by its conduct from asserting that Appellants were not its employees.

(b) The court of appeal erred in law and occasioned a miscarriage of justice when it dismissed the Appellants' claims to their unpaid salaries and interest thereof from the 1st May 2014 to date of judgment of the trial court having regard to the evidence on record that Respondent benefitted from services rendered to it by the Appellants for the period

(c) The court of appeal erred and occasioned a miscarriage of justice when it declined to award general damages to the Appellants for hardship and inconvenience they suffered due to the non-payment of their salaries.

(d) Additional grounds to be filed upon receipt of the record of proceedings

No such additional grounds were indeed filed.

They seek from this court a reversal of the judgment of the court of appeal and a grant of their reliefs claimed at the high court

The designation of the parties at the trial court will be maintained in this appeal.

A summary of the submissions of counsel for the plaintiffs in support of his grounds of appeal is that having held that the respondents were estopped by conduct from denying that the plaintiffs were their employees, that their appointment was not fraudulent, that they had rendered services to the respondent and that section 75(1) of the Labour Act, 2003 Act 651 qualified them as permanent workers, the court of appeal should have ordered a restoration of their names to the payroll 'to enable them receive salaries for the work they do with dedication and punctuality'. See page 4 of counsel's statement of case.

Further, counsel contends that having found that even after their names were deleted from the payroll, the plaintiffs continued working for the defendants right up till judgment in the present matter in December 2016, they were entitled to be paid for that period to prevent unjust enrichment on the part of the defendants.

Finally, counsel submits that the hardship caused the plaintiffs as a result of the failure of the respondents to pay them for almost four years was a natural and probable consequence of this failure so the court of appeal should not have dismissed their claim for general damages.

In response, the Defendants contend that their conduct cannot be used as an estoppel against them since the appointments of the plaintiffs was irregular. Further that a claim for salaries and interest cannot be claimed from the time this irregular appointment was discovered. Regarding the claim for general damages, counsel submits that since this was based on the existence of a contract between the parties and there was none here the plaintiffs are not entitled to such damages.

Finally, counsel attempts to raise an alleged participation in the forgery of the appointment letters by the plaintiffs as a point of law which she raises for the first time on appeal.

The Defendant also seeks a variation of the judgment as they are at liberty to do under rule 15 (6) (b) of the Supreme Court Rules, 1996 (CI 16). The said rule provides as follows

The statement of case of each party to the appeal

(a)

(b) ….in the case of a respondent may include a contention that the

judgment of the court below be varied

Defendants pray that the judgment be varied by denying the plaintiffs all the reliefs sought because the basis of their claim ie the appointment letters were tainted with fraud and they had failed to call Rashid Tanko, a witness most material to their case.

The court of appeal identified the following three issues as those to be determined.

1. Whether the plaintiff/appellants obtained employment from the respondent through fraud

2. Whether the defendant by their conduct can deny that the plaintiffs have been their employees

3. Whether the plaintiffs are entitled to the salaries they earned

It is our considered opinion that the issues at the heart of this appeal are

a. Whether there was a valid contract of employment between the parties

b. Whether the plaintiffs are entitled to any remuneration from 1st of May 2014 to the date of judgment with interest.

c. Whether the plaintiffs are entitled to a restoration of their names to the Defendants payroll

d. Whether the plaintiffs are entitled to general damages

As rightly stated by the trial judge at page 4 of his judgment, the resolution of the first issue could resolve all other issues set down for trial. The learned judge after an analysis of the law and evidence led came to a conclusion at page 283 of the Record of Appeal (ROA) that the 1st plaintiff was not an employee of the defendant. In similar vein, the court made a finding at page 286 that 2nd plaintiff was also not an employee of the defendants.

The evidence on record and the analysis by the trial court shows that although the plaintiffs applied for and were offered employment which they accepted, the process was most irregular. The record clearly shows that the application letters, acceptance letters and appointment letters of the plaintiffs were fraught with disturbing contradictions. The trial court did a lengthy analysis and came to the conclusion that these documents which form the basis of the relationship between the parties were tainted with fraud.

The court of appeal took the position that fraud was not proved beyond reasonable doubt as required by law and so the trial court's finding on that issue was not supported by the evidence on record and held that the defendants were ***'estopped by the provisions of the Evidence Act from denying that the appellants were their staff'. See page 341 of the Record of Appeal.***

The plaintiffs sought to prove their position that they were employees of the defendants by tendering their applications for employment dated 25th September 2012 and 10th March 2012 respectively.1st plaintiff's appointment letter was dated 2nd April 2012, he confirmed his acceptance of the said appointment by a letter dated 5th April 2012. The said appointment was to take effect from 9th April 2012. 2nd plaintiff's appointment letter was also dated 2nd April 2012, he accepted the appointment by letter dated 4th April 2012 and the appointment was to take effect on 9th April 2012. The plaintiffs' evidence is that in actuality, they received their appointment letters on 3rd October 2012 and backdated their acceptance letters to the above stated dates upon instruction from one Rashid Tanko, the defendants Regional Manager who told them to ignore the back dating

of their appointment letters since they would receive their salary from the date they assumed duty. See the Witness Statement of 1st plaintiff at page 53 of the ROA.

The tenor of the said statement is that they had no hand in any fraud perpetrated by this official, if any. The court of appeal appeared to agree with this stand. At page 339 this is what the court said

"Rashid Tanko, who is not a party to this suit had his own undisclosed intentions when he backdated the appointment letter to the plaintiffs. The plaintiffs obeyed his directives to accept the appointment within a specified period. They backdated their acceptance letters too and were instructed to ignore the backdating since their appointment will only take effect in October"

Nothing on record supports the court of appeal's position that the said Rashid Tanko had his own undisclosed intentions. In any case he was not a party to the suit and was not called as a witness. His undisclosed intentions cannot be treated as supportive of the plaintiffs' case.

The crucial question to be answered is whether the earlier mentioned correspondences between the parties amount to a contract of employment between them.

As stated earlier, according to 1st plaintiff, he actually received his appointment letter on 3rd October 2012. The letter required that he accept the offer on or before 6th April 2012. Surely then, at the time he actually accepted the offer on or after 3rd October, the offer of employment had lapsed. It does not matter who instigated his actions and what undisclosed reasons informed this instigation. Neither back dating the acceptance letter nor a failure to strictly prove fraud by the defendant changes this fact.

The situation is the same with the 2nd plaintiff on whose behalf 1st plaintiff testified. He also in actuality received his appointment letter in October 2012 which asked him to confirm his acceptance by a date which had clearly passed.

The court of appeal took the position that the defendants are estopped by virtue of section 26 of the evidence Act 1975 NRCD 323 because

'they have made them believe that they had been regularly engaged as employees of the defendant institution, and that the issue of non-payment of their salaries would be resolved.**' See page 341 of the ROA**.

The said section 26 with the side note 'Estoppel by own statement or conduct' provides as follows:

Except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest

The Labour Act 2003 (Act 651) regulates employer-employee relationships in this jurisdiction. It is stated in its scope of application that it ' applies to all workers and to all employees except the Armed Forces, the Police Service, the Prison Service and the Security and Intelligence Agencies specified under the Security and Intelligence Agencies Act 1996 (Act 526).

By virtue of the maxim ' Generalia specialabus non derogant' it is the provisions of the Labour Act which will prevail over the provisions of the Evidence Act.

This maxim has been explained as 'where two provisions or enactments are in conflict and one of them deals specifically with the matter in in question and the other is of general application, the conflict may be avoided by applying the specific provision to the exclusion of the general one, that is, the special provision prevails over the general one' See Samuel Bonney & Ors vs Ghana Ports and Habours Authority. Civil Appeal No J4/39/2012

Section 12 of Act 651, provides as follows

1. The employment of a worker by an employer for a period of six months or more or for a number of working days equivalent to six months or more within a year shall be secured by a written contract of employment.

2. A contract of employment shall express in clear terms the rights and obligations of the parties

Section 13 sub titled

Written statement of particulars of contract of employment further provides as follows

Subject to the terms and conditions of a contract of employment between an employer and a worker, the employer shall within two months after the commencement of the employment furnish the worker with a written statement of the particulars of the main terms of the contract of employment in the form set out in the schedule to this Act signed by the employer and the worker.

As rightly stated by the court of appeal, the temporary appointment of the plaintiffs, if regular was to be treated as a permanent one by virtue of section 75 (1) of Act 651 since they were in the employ of the defendants for almost one and half years before their salaries were stopped. This section states as follows

A temporary worker who is employed by the same employer for a continuous period of six months and more shall be treated under this part as a permanent worker

The record does not show whether the plaintiffs after assuming duty ever signed any contracts of employment as required by law. At best the correspondence between the parties relating to their employment was an agreement and one riddled with so many irregularities as to make it unenforceable if it came to that.

On the basis of this, we resolve this issue in the negative and confirm the trial judge's findings, but for different reasons, that the plaintiffs (wrongly described as defendants at pages 283 and 286) are not employees of the defendants.

Issue c deals with the plaintiffs claim for a restoration to the payroll of the defendants.

Both the trial court (page 289 of the ROA) and the court of appeal (page 342) refused to order the restoration of the names of the plaintiffs to the payroll. The court of appeal appeared to accept the defendant's position that the procedure of their employment was irregular. We confirm these refusals but base our refusal to order a restoration on our earlier finding that the plaintiffs had no contract of employment with the defendants.

The evidence shows that the plaintiffs were paid from October 2012 when they actually resumed work till the end of April 2014 after which their salaries ceased. They claimed salaries and interest thereon from 1st May 2014 till the time their names would be restored to the payroll.

The high court at page 289 of the ROA made a finding that salaries paid to plaintiffs from October 2012 to April 2014 when they ceased were unlawfully paid and were to be refunded to the defendant but refused to award interest on these due to the 'peculiar facts' of the case.

The Court of appeal made a finding that, the plaintiffs, having rendered services to the defendants for the period above were entitled to the salaries received for the period because a failure to make this award would amount to unjust enrichment on the part of the defendants.

The plaintiffs' state and the record confirms that even after their salaries ceased, they continued to render services to the defendants. Exhibits AU 14 and 15, found at pages 76 and 78 of the ROA are letters from counsel for the plaintiffs confirming this. They stated same in paragraph 19 of their witness statement found at page 55 of the ROA. At no point was this seriously challenged during proceedings except for the last question during cross examination of the 1st plaintiff where it was put to him that he was not a staff of the defendant and he replied that he was.

Quantum meruit, literally meaning 'as much as he has deserved' (Black's Law Dictionary 8th Edition) is used as an equitable remedy where unjust enrichment has occurred to enable a plaintiff to recover even if a contract is unenforceable for one reason or other. Although usually pleaded as an alternative remedy, where this has not been done as in

the instant case, the courts have not hesitated in the interest of justice to make restitution for the plaintiff by reversing

'…the unjust enrichment of the defendant through its retention of the benefit of the plaintiff's services without any payment for them….' See

City & Country Waste Limited v Accra Metropolitan Assembly [2007-2008] 1 SCGLR 409 @ 435 and 436

Reference is also made to the cases of Scarisbrick v Parkinson (1869) 20 L.T 175 and Craven-Ellis v Canons Ltd [1936] 2 KLB 403 cited in the Ghanaian cases of Hammond v Ainooson [1974] 1 GLR 176@ 183 & 184 and Skanska Jensen International v Klimatechnik Engineering Ltd [2003-2004] 2 SCGLR 698 @ 716

In the first case, it was held that a clerk was entitled to recover fees for his services on quantum meruit even though the contract under which he had performed them was unenforceable by reason of the Statute of Frauds. In the second case the court held that an agreement was void because the directors of a company had had no authority to act and so could not bind the company so the claim in contract must fail but a claim in quantum meruit would succeed because the plaintiff had indeed done work for the company for which he was entitled to remuneration.

In the Supreme court case of Mabsout v Fara Bros (Ghana) Ltd [1964] GLR 164 the court stated at page 441 as follows

'The acceptance of services rendered by the appellant at the request of the company, raises an inference of a promise to pay on a quantum meruit basis. This is not an inference of fact, but is a rule of law imposed on the parties where work has been done under what purports to be a binding contract, but is **not so in fact'** Emphasis mine.

The above statement is clearly applicable in the circumstances of this case. The plaintiffs provided services to the defendant under what they thought was a contract of employment, which was indeed not. They were paid for a part of the period when these services were rendered. Although their salaries were stopped from May 2014, they

continued rendering services to the defendant who also accepted these services even after plaintiffs issued a writ against them.

We find that the plaintiffs are entitled to the salaries paid them from October 2012 when they assumed duty till April 2014, as held by the court of appeal. Further, on the equitable doctrine of quantum meruit, they are also entitled to salaries from May 2014 to 12th August 2015 when the defendants filed their statement of defence. We fix this date as the end point because by the statement of defence and counterclaim, the defendants clearly disputed the legality of plaintiffs' appointment letters and sought a declaration in their counterclaim that plaintiffs were not their employees.

This should have put the plaintiffs on notice that they were not considered employees.

By this we enhance the order of the court of appeal regarding the period for which the plaintiffs are to be paid. The plaintiffs claim for interest is also granted in the following terms. The defendants are to pay interest at the statutory rate of interest (C.I 52) on these amounts from 1st May 2014 to 12th August 2015.

We are also satisfied that an award of general damages is not appropriate in the circumstances of this case because there was no contract of employment and refuse to award same. The contention of the defendants that the judgment be varied on the basis of proven fraud and the failure to call a material witness is also dismissed.

The appeal of the plaintiff/appellant succeeds in part.

AVRIL LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

Y. APPAU

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

I. O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

COUNSEL

MOHAMMED ALHASSAN FOR THE PLAINTIFFS/APPELLANTS/APPELLANTS.

STEPHEN OBENG DARKO LED BY ANNETTE OHENEWAA ADUTWUM FOR THE DEFENDANTS/RESPONDENTS/RESPONDENTS.