

IN THE HIGH COURT OF SIERRA LEONE
(INDUSTRIAL & SOCIAL SECURITY DIVISION)

BETWEEN:

**ABDUL AZIZ SOWE
15 PIPE LINE
JUBA HILL**

- PLAINTIFF

AND

**THE BANK OF SIERRA LEONE
30 SIAKA STEVENS STREET
FREETOWN**

- DEFENDANT

RULING DELIVERED BY THE HONOURABLE JUSTICE M.P. MAMI J.A
DATED 6TH DAY OF MARCH, 2024.

COUNSEL

BAH& CO SOLICITORS.

-FOR THE PLAINTIFF

LAMBERT & PARTNERS

-FOR THE DEFENDANT

There is a writ of summons filed by Messrs. Alpha Bah Esq. counsel for the plaintiff filed on the 23rd day of February 2021 praying for the following orders:

1. A declaration that the defendant herein wrongfully terminated the plaintiff's employment services with the said defendant on the 20th day of March, 2019.
2. A declaration that he plaintiff resigned his employment services with the said defendant on the 5th day of Marc, 2019.
3. The recovery of severance benefits less than three months salary in lieu of notice for a period of 8 years estimated at One Hundred and seventy-nine Million One Hundred and Twenty-nine Thousand Five Hundred and Forty-seven Leones Forty Cents (Le179,129,547.40)
4. The recovery of 26 unused leave days estimated at Forty-two Million Three Hundred and Thirty-nine Thousand Seven Hundred and Eleven Leones Twenty Cents) Le42,339,711.20.
5. Interest of 25% on the said sum from 6th day of March, 2019 until judgement.
6. Any further or other relief (s) and
7. costs

A memorandum of appearance was entered and filed on the 11th of March, 2021 by Messrs. Lambert & Partners; solicitors for the defendant, followed by Notice thereof.

On the 21st day of April 2021, Messrs. Lambert & Partners delivered and filed a statement of defence.

Averments all of which I will repeat herein to wit:

Paragraph 1. save that the defendant admits that the plaintiff worked in several department of the defendant, and that his last posting was serve as Director on special assignment in the governor's office, the defendant denies employing the plaintiff on the 15th November, 2010 as a Division Head in the professional cadre as alleged. In paragraph 1 of the particulars of claim.

Paragraph "2" – "The defendant admits paragraphs 2 and 3 of the particulars of claim.

Paragraph 3 "The defendant will aver in response to paragraph 4 of the particulars of claim that (i) By letter dated 5th October 2010, the defendant offered the plaintiff employment in the defendant's establishment on the terms contained therein

(ii) the plaintiff signed accepting the terms of the defendant's offer of employment on the 19th October, 2010

(iii) that the plaintiff was to commence, and did commence work at the defendant's establishment on the 1st November 2010; and

(iv) the defendant signed accepting the terms and conditions contained in the defendant's staff Handbook as approved by the Board of Directors of the defendant on the 15th November 2010, save as the above consists of admissions, the defendant denies the allegation contained in paragraph 4 of the particulars of claim.

Paragraph 4 "In response to paragraphs 5, 6, 7, and 9 of the particulars of claim, the defendant will aver as follows:

(1) That by Article 8.1 (a) of the Staff Handbook of the defendant (which forms part of the contract of employment between the plaintiff and the defendant, the plaintiff agreed as follows:

"Staff including the probationers, resigning from the services of the bank, shall give the bank notice or payment in lieu of such notice in accordance with their rank as follows: -

- (i) Below the rank of banking officer-21 calendar days.
- (ii) Banking officer, and above but below the rank of manager- one calendar month
- (iii) Manager and above- three calendar months
- (iv) That the plaintiff was at all material times employed by the defendant above the rank of manager the applicable period of notice to be given by the plaintiff to the defendant in accordance with Article 8.1 above is three months payment in lieu of such notice
- (v) That the defendant undertakes staff training from time to time of its employees. In this policy which applies to training of all members of staff of the defendant, including the plaintiff, the defendant will

Refer to the Training Policy for its full terms and effect.

Paragraph (iv) "Paragraph 5 of the Training Policy of the defendant provides inter alia that

"All staff on Banks sponsorship will be borrowed to serve the bank for a period equal to:

- at least one year in case of short courses of less than one-year duration; and
- in the case of courses whose duration is one year or more, they must serve the bank for a minimum period equal to the duration of the course that they pursued.

Paragraph (v) That by a Memorandum dated 27th August, 2018 from the Deputy Director Human Resources of the defendant to the plaintiff, the defendant communicated to the plaintiff, that executive approval had been granted to the plaintiff to participate in a course on Strategic Internal Auditing, London Corporate

Training London, United Kingdom, September 2010-21, 2018 at the total cost of US\$7,484/40 OR Le1,056,000/00.

Additionally, the defendant purchased a return air ticket for the plaintiff to attend the course in London and return to Freetown at the cost of Le229,300.000/00 and the sum of £4,150/00

- (vi) – “In the memorandum mentioned in paragraph 4 of the statement of defence, the defendant informed the plaintiff that
“We hope you will find the programme rewarding and look forward to receiving two copies of a written report within seven days of your return., You are required to execute a Bond with the bank form is attached herewith for completion and return to the Human Resources Department against Monday, September 3, 2018.
- (vii) “the plaintiff knowing fully well that, he was obliged to sign the Bond refused the attempts made to him by employees of the defendant’s sign the Bond before his departure and against the date indicated.
- (viii) the plaintiff did attend the course at the defendant’s expense and returned for work in September, 2018.
- (ix) That by letter dated 5th March, 2019, the plaintiff resigned his employment (in breach of Article 8.1 of the Staff Handbook and the contract of employment with the defendant and the above-mentioned paragraph 5.2 of the Training Policy when the plaintiff informed the defendant that
“I regret to inform you that I am resigning my position here immediately as a Director, governor’s office, special assignment for personal reasons. My last day is today 5th of March, 2019.”
- (x) “Because the plaintiff was in breach of Article 8.1 of the Staff Handbook of the defendant (by failing to give the agreed period of notice or paying to the defendant salary in lieu of such notice) and paragraphs 5.2 of the Training Policy of the defendant (by resigning his employment before the expiration of his return from the training course mentioned in 4(viii) above, the defendant was not under the plaintiff’s resigning.
- (xi) The defendant, by letter dated 6th March, 2019, rejected the attempted resigning of the plaintiff and informed him that he should report for work immediately.

- (xii) By letter dated 7th March, 2019, and received by the defendant on the 11th March, 2019, the plaintiff informed the defendant that he, maintains that he has resigned his position with the defendant from the 5th March, 2019 and cannot report for work as stated in the letter mentioned in paragraph 4 above.
- (xiii) "upon failure of the plaintiff report for work as demanded by the defendant, the defendant dismissed the plaintiff from its employment by letter dated 20th March, 2019
- (xiv) save as paragraphs 4(1) to (xiii) of this statement of defence consist of admissions of paragraphs 4, 5, 6, 7 and 9 of the particulars of claim, the defendant denies the allegations contained in the said paragraphs.

Paragraphs 5 – Paragraph 10 and 11 of the particulars of claim, the defendant denies the allegation contained in the said paragraphs.

Paragraphs – Paragraph 10 and 11 of the particulars of claim of the statement of claim are denied

Paragraphs 6 "The defendant admits to the exchange of letter mentioned in paragraph 10 of the particulars of claim but makes no admissions as to he contends of the letter of Bah & Co. solicitors of the plaintiff.

Paragraphs 7 "The defendant repeats paragraph 4 of this statement of defence in response to paragraphs 11, 12 of the particulars of claim and aver that the plaintiff is not entitle to severance benefits from the defendant.

Paragraphs 8 "The defendant cannot admit nor deny the allegations contained in paragraph 12 of the particulars of claim.

Paragraphs 9 "Save as the same consists of admissions the defendant denies each and every allegation contained in the statement of claim as it the same were set out herein and traversed seriatim

On the 28th day of April, 2021 the plaintiff filed a reply wherein he 'joined issued with the defendant upon its defence'

Issues in Contention

- (a) * Whether or not the plaintiff was unlawfully dismissed by the defendant.
- (b) * Whether the plaintiff is entitled to end of service benefit
- (c) * Whether the plaintiff resignation was valid resignation

It is but important to set out the facts of the matter as claimed by the plaintiff same as contained in the writ of summons to wit:

Facts

That the plaintiff was at all times to this action erstwhile Director, Governor's office 'Special Assignment of the 'Defendant bank herein, the plaintiff was employed by the defendant bank on 15th November, 2010, as a Division Head in the professional cadre and worked in several departments of the said bank, including working at its Finance and Audit Departments that the defendant herein is established by the bank of Sierra Leone Act, 2019 (Act No.5) as a body corporate having perpetual successful capable of suing in its corporate name and being sued as such too. It interalia, acts as banker, adviser and fiscal agent for the government of Sierra Leone.

That on the 1st day of November, 2010, the plaintiff was employed by the defendant as Division Head for a probationary period of twelve (12 months) which said employment was made permanent based on the satisfactory performance and conduct of the plaintiff.

That after the signing of the said employment agreement, the plaintiff went into employment, and that he complied with his obligations as per the said agreement.

That by letter dated the 5th day of March, 2019, the plaintiff resigned his position at the defendant's institution.

That on the 6th day of March, 2019, the defendant, by letter dated 6th day of March, 2019, purportedly rejected the plaintiff's resignation on the basis of short notice and financial commitments and this ordered that the plaintiff returned to work.

That by a reply dated 7th day of March 2019, the plaintiff replied to the defendants purported rejection stating emphatically that he has resigned his position in the defendant's institution and requested that the defendant calculates the plaintiff's end of service benefits, and deducts all financial obligations including the payment in lieu of notice as per Article 8.1(a) of the defendant's handbook.

That whilst in the defendant's employment, the plaintiff had 26 unused leave days due to the fact that the defendant refused to allow the plaintiff to take such leave days.

That the plaintiff was shell-shocked to receive a letter dated the 20th March from the defendant's institution stating that it has dismissed the plaintiff herein after the said plaintiff has resigned his position from the defendant's institution.

That it was against this backdrop that the plaintiff instructed his solicitors Messrs. Bah & Co. Solicitors who wrote a letter to the defendant demanding severance benefits plus interest but the defendant out-rightly rejected the claims of the plaintiff herein.

The plaintiff further claimed that the defendant is determined not to pay the severance benefits and unused leave due and owing the plaintiff unless the court intervenes.

That by reason of the matters aforesaid, the plaintiff has suffered loss and damages.

Wherefore the Plaintiff claims

1. A declaration that the defendant herein wrongfully terminated by the plaintiff's employment services with the said defendant on the 20th day of March, 2019.
2. A declaration that he plaintiff resigned his employment services with the said defendant on the 5th day of Marc, 2019.
3. The recovery of severance benefits less than three months salary in lieu of notice for a period of 8 years estimated at One Hundred and seventy-nine Million One Hundred and Twenty-nine Thousand Five Hundred and Forty-seven Leones Forty Cents (Le179,129,547.40)
4. The recovery of 26 unused leave days estimated at Forty-two Million Three Hundred and Thirty-nine Thousand Seven Hundred and Eleven Leones Twenty Cents) Le42,339,711.20.
5. Interest of 25% on the said sum from 6th day of March, 2019 until judgement.
6. Any further or other relief (s) and
7. costs

Background

On the 25th day of May, 2021, counsel for the plaintiff applied to this court by notice of motion, seeking for the following reliefs:

1. That this Honourable court grants a stay of all proceedings in the above matter pending the hearing and determination of this application
2. That the above mentioned actions be consolidated pursuant to Order 4 Rule 4 of the High Court Rules 2007
3. Any further or other reliefs that this Honourable Court may deem fit and just and necessary
4. That the cost of this application be cost in the cause

This court based on the consensus of the parties, order for the relief as claimed

Consequently, the matter FTCC 262/19 2019 B. No.17 and I.S.S 13/21 2021 S. No.2 were consolidated.

The matter proceeded to trial and on the 1st day of June the plaintiff was placed on the stand, the following came out from his testimony as recorded wholesale.

XX I am Abdul Aziz Sowe, and I live at 51 Pipeline juba Hill.

XX I am a chartered accountant, and the defendants in this action were my former employers.

(Witness shown his statement)

XX Yes, I made a witness statement.

XX I made a witness statement and signed same and I wish that the witness statement to be seen by this court.

(application made for the statement to be tendered and form part of the evidence of the witness marked PW1¹⁻³)

(Witness referred to exhibit page 16 to 17)

XX This document is an offer of appointment from the Bank of Sierra Leones

XX The date of the letter is 15th October, 2010

(Witness referred to page 18)

XX It's an acceptance of the terms and conditions of service, on the day I commenced work.

xx I commenced this work on the 15th November, 2012, Yes, I signed the acceptance letter (Witness referred to page 19

XX Page 19 is a memorandum from the governor to myself, transferring mygoodself to the governor's office.

XX The date of the memo is 1st March, 2019.

XX Yes, it was served on me on the 14th of March, 2019

(Witness referred to page 20)

XX A memo from myself to the Agt. Director follow-up and special assignment division.

XX The date is on the 4th of March, 2019

XX This was handing over notes from the job of Directors of Internal Audit.

XX (Witness referred to page21) this is a follow-up

(Witness referred to page 22)

XX It's a letter of resignation from myself addressed to the Deputy Director of Human Resources Department, the date is 5th March, 2019.

XX The essence of the letter is me resigning from the Bank of Sierra Leone from the 5th March, 2019.

(Witness referred to page 23 and 24)

XX This is a letter from the governor of the bank replying to my letter of resignation

XX The date is the 6th of March, 2019

XX The essence of the letter was that he acknowledges receipt of any letter and demanded that I report for work

(Witness referred to page 25)

XX The date is 7th March, 2019.

XX This is a letter from myself to the governor of the Bank of Sierra Leone replying to his letter of 6th March.

XX I maintained in this letter that I have resigned from the bank with effect from the 5th of March, 2019 and can't therefore report at work as stated in his letter. I also requested that they calculate my end of service benefit (page 25) and deduct any and all financial obligations, including payment in lieu pf notice and communicate to make arrangement to settle any outstanding sums.

(Witness referred to page 26)

XX This is a letter from the governor to my goodself, informing me, that I have been dismissed, from the bank with effect from 6th March, 2019

XX This letter is dated 20th March, 2019

XX (Witness referred to exhibit A28 to 43)

XX This is the staff handbook of the Bank of Sierra Leone

(Witness asked to read Article 8(c) page 39)

Witness asked to read Article 9.5 of the staff handbook exhibit A28-43 page 42)

XX I was not subject to any notification and reply procedures as stated therein.
(Witness referred to his statement)

XX Yes, I had a vehicle loan

XX Yes, I paid the amount as in paragraph 10 of my witness statement.

XX Yes, I had a housing loan scheme, I am still paying on that one.

XX I have already paid 15 months and balance of 1 month

(Witness referred to paragraph 7 of the witness statement)

XX Witness referred to exhibit A20.

XX Yes, I served the handing over note to the Assistant-Director of Follow-Up and Special Assignment.

XX I was offered employment by the Bank of Sierra Leone. sometimes in October, 2010.

(CROSS-EXAMINATION)

XX Yes, the 5th of October, 2010, the bank has the records

XX Yes, I accepted the terms and conditions of the employment.

XX I commenced work on the 15th of November

XX What I signed on the 15th of November, was the staff handbook.

XX Yes, the staff handbook form part of the contract

XX Yes, I am conversant with the staff handbook

XX I was not in breach of the staff handbook when I resigned.

(witness shown staff handbook) Refers to Article 8.1 paragraph (3)

XX Yes, I did not give the bank (3) calendar notice. You are not correct for the three (3) month in lieu of notice.

XX I was at the higher cadre and we have exposure to lots of administration issues.

The three (3) months lieu of notice is netted off what they owe.

XX Yes, I was one that there was a training policy.

XX Everybody is bound by the training policy

XX It was a fully funded training and not a scholarship.

(Witness shown memorandum dated 27th August 2018

XX I did not sign the bond

XX Witness shown the training policy (Paragraphs 5.2)

XX It was a course less than 6 months.

XX I am not sure whether the policy that is before the court is the approved policy by the Board.

XX I did not sign a training bond.

XX My resignation was rejected by the governor

XX I only received a reply from the governor

Witness referred to letter dated 6th March, 2019. (refers to 2nd paragraph)

XX The governor drew the attention to Article 8.2

XX At the referred time, I had obligations on the vehicle and housing loan.

XX He ordered me to report to work

XX I replied to the governor telling him of my position.

XX I received a letter on the same date, I was dismissed.

(END)

(RE-EXAMINATION)

XX Because as a full chartered accountant I had already had knowledge of internal auditing. I told them it was necessary and it recommended for this, and I saw it necessary.

Labour Officer (SOK)

XX My names are Abdulai Conteh, Assistant Director and employment at the Ministry of Labour Social Security.

XX I have been there for about 10 years.

XX Some of my job specification include:

- To look into matters forward to the Ministry as complaints
- Refer matter to the industrial court, that was not resolves in the ministry.
- Vet and at least contracts of employment, including inspections, wage inspection and general inspection

XX I have been at the Ministry for ten (10) years.

XX The document was sent by this court to do the computations in the matter between Mr. Abdul Aziz Sowe V. Bank of Sierra Leone.

XX On assignment of those documents I did the computation, looking at the conditions of service of the Bank of Sierra Leone of April, 2009.

XX The computation were done in the total amounts to be paid to the plaintiff as his entitlement was 197,042,502.14

These are entitlements due Abdul Aziz Sowe under the employment of Bank of Sierra Leone, under the employment of Bank of Sierra Leone, under their conditions of service with referred to Section 8.3A and Section 8.1A(iii), this was what we used to do the computation.

XX I have the computation. It is signed and dated by Abdulai Conteh

(Mr. Bah declined asking question for the plaintiff)

Cross-examination by Mr. Fofanah

XX I used the resignation letter to do the computation, and the number of years is eight (8) years five (5) months. If it's not up to six (6) month you aggregate.

XX No. five (5) months is not up to six (6) months.

XX If that is we will review.

If given time, I will review taking into consideration, the said Section.

XX Yes, I proceeded to calculate and computer that Mr. Abdulai Aziz Sowe, and the total computation was Le286,000 after deducting 275,084 the three (3) months in lieu notice to Le107,477.728.44 Cents (Old Leones), the net total is Le179,129.547.4 Cents is old Leones (Evidence marked exhibit "A")

XX The sole consideration used in the computation was the terms and conditions of service

XX I am not a tax or security expert.

This is the vase for the plaintiff

(DW1) (SOK)

XX I am Ms. Adizatu Vangahun, and I live at Bathurst, Western Area, I work at the Bank of Sierra Leone. I am assistant director staff planning division the HRM of the bank of Sierra Leone.

XX I have worked at the Bank of Sierra Leone for 24 years, and I know the plaintiff as an erstwhile director

XX Yes, I made a witness statement in this matter.

XX The witness statement is dated 20th July, 2022.

XX This is the witness statement and its my signature

XX I want this statement to form part of the evidence in chief.

(Witness statement tendered)

XX I don't have anything else to say.

DW1 (S.O.B)

XX I have worked for the bank for 24 years now

XX I started as a clerk and rose through the ranks to banking officer, manager and then senior manager and currently assistant director.

XX I started at the HR on the 17th May 1999 sometimes around October, I was transferred to another department then it was financial department, served for few months, and then I was moved to a new department called development-co-ordination since 2001.

XX In 2006, then I went for further studies, I returned in 2008, I was deployed in the accounts and budget, I came back to the HR in 2011.

since 2011 to date, I am still at the HR. Department.

XX Yes, I am well versed with the HR issues and au fait with the staff handbook.
(Witness shown exhibit A25). It was a letter from the plaintiff dated 7th March, 2019.

(witness referred to the 2nd paragraph)

XX It did not come directly to me; I saw it in the plaintiff file

XX witness referred to exhibit A22

XX The plaintiff resigned as of the 5th of March, 2019.

XX He actually told us to calculate his terminal benefits including in lieu of notice.

XX Yes, the calculation was done but he calculated his obligations firstly.

(Witness referred to the staff handbook) A39.

XX It makes provisions for payment in lieu of notice

XX Yes, the employer is bound by it.

XX Yes, we have legal policies in place

XX The training policy does not specify that the employee cannot resign.

XX There is nothing like rejecting resignation expressly

"Witness referred to exhibit A26. Referred to 8.1 (c) of the staff handbook."

XX I don't know what transpired between the plaintiff and the governor.

(Witness referred to Article 9(5))

XX I did not see any notification in terms of dismissal

XX They did not charge him with any offence.

neither did they give him opportunity to reply.

XX I cannot speak to whether there was any document of changes or reply

(Witness referred to exhibit 8.1 F)

XX Speaks of abandonment of post.

XX What we saw was a letter of dismissal

XX In my personal opinion, he did not abandon his post.

Analysis of the Issues in Contention and the Applicable Law

As I stated inter earlier, the issues in contention are to:

- (a) Whether or not the plaintiff's resignation is valid
- (b) whether or not the plaintiff is entitled to is end of service benefit and other entitlements claimed in the writ of summons initiating this action.

Whether or not the plaintiff's resignation is valid.

The first point to establish in the proof of above

the plaintiff's employment with the defendant not in contention, same of which is explicitly covered in exhibit "MT1"

Paragraph 1 of the said letter of appointment states:

"With reference to your application for employment and the subsequent interview. It has pleased the bank to offer your appointment effective 1st November, 2010, subject to satisfactory references and medical report

Position: Director Head

grade and level: D1/1

The penultimate paragraph of same states:

"the bank expects the highest standard of integrity and efficiency and total compliance with its existing Rules and conditions of service as contained in the staff handbook, a copy of which you will be provided with."

Exhibit "MT2" Constitute the acceptance of terms and conditions of service

It states:

"I Abdul Aziz Sowe being a member of staff of the Bank of Sierra Leone do solemnly declare that:

(1) I accept the terms and conditions of service contained in the Staff Handbook as approved by the board of directors of the Bank."

Same is signed by the plaintiff and witnessed by an employee of the defendant bank.

It was also not been in contention that the contract of employment is consummated by the Staff Handbook and regulated by our labour laws.

The plaintiff told this court that he commenced this work on the 15th November, 2012, and that he signed the acceptance letter.

The plaintiff intimated to this court of the memorandum from the bank governor to himself, wherein he was transferred to the governor's office, which memo is dated 1st March, 2019.

He also refers during his evidence in chief to the memorandum from himself to the Agt. Director-Follow-Up and Special Assignment Division dated 4th March, 2019, that this was handing over notes from the job of Director of Internal Audit.

He also referred to the reply dated 6th March, in which he maintained that he had resigned from the bank on the 5th of March, 2019, and therefore cannot report for work as stated in his letter, and also requested for calculation of his end of service benefit and deduct any and all financial obligations subsequently however, he told this court, that he was surprised to receive a letter from the governor to his goodself, informing him, that has been dismissed from the bank with effect from 6th March, 2019.

He also strongly asserted, that he was not subject to any notification and reply procedures as stated therein. He also cross-referenced to Article 8(c) (page 39), and Article 9.5 of the staff Handbook (exhibit A28-43) (Page 42)

When he was cross-examined, he told this court that upon him signing the Staff Handbook this constituted and formed part of the contract, and that he was conversant with the Staff Handbook.

He also vehemently denied ever been in breach of the Staff Handbook and when referred to Article 8.1A (paragraph 3), and strongly maintained that he did give the bank 3 calendar month notice.

He also intimated that the three (3) months in lieu of notice is netted off what they owe.

When confronted with the issue of training policy, he told this court that he was bound by the training policy. That the training attended was a fully funded training policy and did not sign the bond.

The crux of the contention however, is that it is undisputed that the plaintiff resigned, save that the resignation was not accepted by the governor.

Legally a resignation is the voluntary and unilateral repudiation of the contract of employment by the employee without or without prior notice to his employer. It is quite obvious that the constitution of Sierra Leone Act No.6 of 1991 specifically Section 19 (1) thereof provides:

“No person shall be held in slavery or sentried or be required to perform forced labour or traffic or deal in human beings.”

To this end, an employee has the right to resign when he decides he no longer wants to work with his employer at any point in time. Although he may be required to fulfil certain conditions prior to his resignation, his right if he wants, cannot be denied in law.

Article 8 of the Staff Handbook, which is integral to the employment contract provides:

8.1 “Separation from service”

The service of a member of staff may be severed by any of the following:

- Resignation
- Termination
- Dismissal
- Retirement
- Completion of Service
- Abandonment of post
- Death

So clearly the Handbook does recognise and accept that resignation, which is in issue, is one of the methods of severance, and clearly one which the plaintiff exercised as the mode of exit from the defendant institution.

However, such mode of exit takes into consideration, the issue of notice, to be given in an event this is invoked.

In order not to jeopardize or otherwise negatively affect the business of the employer, however the employee has a duty in law to duly notify his employer of his intention to resign. This must be in line with the period of notice required by the term of the contract of employment.

Article 8 1(a) specifically provides the procedure required timeline:

“Staff including probations, resigning from the services of the bank, shall give the bank notice or payment in lieu of such notice in advance with their rank as follows:

- (i) Below the rank of banking officer-21 calendar years
- (ii) Banking officer and above but below the rank of manager-one calendar month
- (iii) Manager and above-three calendar months.

It is the key contention of the defendant bank same as is contained in the statement of defence, which has been so extensively set out, that because the plaintiff was in breach of Article 8.1 and gave notice thereof, and because of the Training Policy (by resigning his employment before the expiration of one year of his return from the training course), the defendant was not under any obligation to accept the plaintiff's resignation.

The question this court will ask is whether if the plaintiff's resignation (without the exercise of him discharging his employment contract with the defendant bank), is tenable?

As I indicated inter earlier, an employee has the right to resign when he decides he no longer works.

The issue of “Notice” is not to jeopardize or otherwise negatively affect the business of the employer, however the employer has a duty in law to notify employer of his intention to resign. This must be in line with the period of notice required by the terms of his contract of employment.

The plaintiff clearly told this court on cross-examination that he did not give the defendant the 3 calendar months notice.

In fact, in exhibit B18 which was a response from the plaintiff to the governor of the bank of Sierra Leone dated 7th March, 2019 the intimate thus:

Dear sir,

Thank you for your letter of 6th March, 2019 with reference Gov. 13/4. An acknowledge receipt of my letter of resignation dated 5th March, 2019.

I still maintained that I have resigned my position with effect from the 5th of March, 2019 and cannot thereof report for work as you stated in your letter.

Please calculate my end of service benefits, and deduct any and all financial obligations including the payment in lieu of notice as per Article 8.1(a) of the staff handbook and communicate same to me to make arrangement to settle any outstanding sums.

The issue of the Training Bond, the plaintiff told this court that everybody was bound by the Training Bond. He also told this court when been cross-examined that he was aware that there was a training policy, and when shown paragraph 5.2 of his statement he said it was a course less than six (6) months.

That the governor in his letter drew his attention to Article 6.2, but told this court that he did not sign a training bond.

It was undisputed and incontrovertible that the plaintiff attended the training, and benefitted from it, notwithstanding his claims that he did not sign the bond.

Exhibit B7 (18) is the Training Policy, all of which forms part of the Rules and Regulations of the defendant bank. Pages 21 and 23 of exhibit B7 clearly articulates the employee's obligations stipulating how the issue of Bond is to be treated and implemented.

It is clear that the plaintiff exercise of his right to resign, but for same to be calculated in cost lieu of notice is all but not incongruent with the terms and conditions of service.

It may well appear that there was a tension between the erstwhile governor and the plaintiff, details of which was also clearly articulated in the realignment of the plaintiff's position.

However, he resigned, which he has made know is clearly within his rights but same was heightened by the letter of 20th March, 2019.

The plaintiff was dismissed from the service of the bank and same was signed by the erstwhile governor wherein the 1st line states:

"You are hereby informed that you have been dismissed with effect from 6th March, 2019."

Oxford (concise dictionary) 10th Edn. define the word "dismissal" as to discharge from employment or to send away. Moreover, a dismissal is the act of removing someone from his job, especially because he has done something wrong.

A dismissal simply put is a discharge of the contract of employment by the employer with justification and which justification, often imputes or connotes an element of misconduct on the part of the employee.

The reason for the dismissal has to be stated on the letter same of which regrettably is not provided therein.

A dismissal also connotes misconduct or wrongdoing an employee accused of any such misconduct has to be taken through any available internal disciplinary processes, which must include the observance of the rules of natural justice, to establish his guilt or otherwise before action is taken.

Wrongful dismissal however is the discharge of the contract of employment.

In an action for wrongful dismissal the plaintiff first has to establish breach of his contract of employment. It is only after that the question of damages would arise.

In the Supreme Court of Sierra Leone case of Jessie Rowland H. Giltens-Stronge (Appellant) And Sierra Leone Brewery (Ltd) (Respondent) judgement delivered on 17th day of December, 1960, Livesey Luke C.J said:

"In my opinion, the relevant lesson that case teaches us is that an employer must comply with the terms stipulated in the contract of service for the termination or dismissal of the employee; otherwise he terminates the employment at his peril. He will then be held to be in breach and the dismissal will be wrongful. This in support of the view that I have expressed above that the company did not comply with the stipulated terms for termination of the employment of the employment of the appellant and therefore they were in breach and the dismissal wrongful."

Article 8(c) of the underlying contractual document; the Staff Handbook provides:

Dismissal

"A staff member may be dismissed for serious misconduct, subject to the notification of charges and reply procedure. In such a case, no notice is given and the staff member shall not be entitled to any benefits"

In the Ghanaian case of Senkyire V. Abosso Goldfields Ltd 15 MLRG 200, S.C Per Arinakwa, JSC; Arkhurst V. Ghana Museums and Monument Board (1971) 2 GLR 1 at 7

“At common law misconduct inconsistent with the due and faithful discharge by the servant of the duties for which he was engaged, is good cause for his dismissal, but there is no fixed rule of law defining the degree of misconduct which will justify dismissal. Also if he is guilty of fraud or dishonesty in connection with the business of his employer he may be dismissed.”

Dismissal for bad conduct on the job usually dismissal for gross misconduct for an employee's dismissal for misconduct to be fair, it has to be established that the employee was sufficiently aware of the conduct that is expected of him and that which is expected of him per the job he is doing in general and his appointment in particular. These dos and don'ts are usually stipulated in the contract of employment, although sometimes it can be inferred from prevailing circumstances and custom of the trade involved.

Article 9.1 of the staff handbook (a) provides for:

Disciplinary measure:

“Any member of staff who commits a breach of any of the regulation of the bank or who displays negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the bank or in conflict with its instrument or who commits a breach of discipline or is guilty of any other act of misconduct or who by his action (s) brings the bank to disrepute, or who is convicted of a criminal offence, shall be liable to any of the following penalties:

- (i) Dismissal
- (ii) Termination
- (iii) Suspension
- (iv) Fine/Recovery
- (v) Reprimand in Writing

Article 9 (a) however provides for dismissal, to wit:

“The bank reserves the right to summarily dismiss an employee who is found guilty of committing a serious breach of non-observance of the bank's rules and regulation, staff dismissed from the service of the bank shall not be entitled to end of service benefits.”

The use of the phrase “find guilty” presupposes subject to the disciplinary committee for breach of non-observance of the bank's rules and regulations.

Infact, Article 9.6 provides for constitution of such a disciplinary committee:

"A disciplinary committee will be constituted by management from time to time. Alleged breaches of discipline will be referred to this committee which will investigate such allegations, determine the guilt of otherwise of the staff member (s) and recommendations to management for disciplinary action when required."

Clearly the Staff Handbook explicitly lays out the procedure for breaches or infringement of the Rules and Regulations.

The question this court will ask itself is whether this procedure was invoked by this governor, consistent with the staff handbook which is integral to the underlying contract of employment.

The bane of the erstwhile governor's contention for non-acceptance of the resignation as two (2) folds

- Notice or payment in lieu of such notice unsolved
- Services of financial and other commitments with the defendant bank.

Did the aforstated in my estimation and analysis constitute "misconduct"?

Certainly in my candid view there was lots of informality and rightly so demonstrably high-handedness on the part of the governor, as he had clearly in the referred letter not complied with the terms stipulated in the contract of employment, and consequently thereof in the words in the words of Livesey Luke C.J in the case of Jessie Rowland H. Giltens-Stronge (Appellant) and Sierra Leone Brewery Limited (Respondent) Civ. App.7/79 in the Supreme Court of Sierra Leone, which I succour thereunder:

"He terminated the employment at his peril"

He goes further to state "It is pertinent to recall the words of Lord Mangham in Jupiter General Insurance Co. Ltd V. Sherff (1957) 3 All E.R 67 P.C. He said inter alia:

"Their lordship recognise that the immediate dismissal of an employer is a strong measure, ... on the one hand it can be in exceptional circumstances only that an employer is acting is committing a single act of negligence; on the other, their lordship would be very loath to assent to the view that a single outbreak of bad temper, accompanied it may be, with regrettable language, is a sufficient ground for dismissal."

These unsolved issues could have been monetized and or otherwise deducted/bonded from the plaintiff's benefits with the defendant bank.

Infact, from the letter of the plaintiff dated 7th March, 2019 addressed to the governor he stated quite clearly in the last paragraph:

“Please calculate my end of service benefits and deduct any and all financial obligation (including the payment in lieu of notice as per Article 8.1(a) and communicate same to me to make arrangements to settle any outstanding sums.”

Further this was even also affirmed by DW1, who worked in the HR department for considerable number of years and who told this court, that she saw the resignation letter, and that the plaintiff intimated that they calculate his terminal benefits including “lieu of notice” and wherein she also further intimated that the Training Policy does not connote that, the employee should not resign.

She also unequivocally told this court that the plaintiff did not abandon his post.

The plaintiff it is clear was accorded the opportunity of “fair hearing” which is a constitutional requirement and a cornerstone of Human Right, for which this Honourable court adopts in Wholesale the case of Nicholas Masaya Kyula V. Farmchen Limited Industrial cause number 1992 of 2011 (2012) LLR 235 (ICK) (ORYAYA J on November, 2012)

Where the following proposition of law clearly emanated from, and is applicable in this instance.

- (a) It is not sufficient for the employer to make allegations of misconduct against the employee. The employer is required to have internal systems and processes for undertaking administrative investigations and verifying the occurrence of the misconduct before a decision is arrived at.
- (b) Typically, the process would entail the following steps:
 - (i) A report to the relevant authority that misconduct has been committed by an employee
 - (ii) A preliminary report to gather relevant information on the alleged misconduct
 - (iii) If the evidence is obvious and misconduct is gross, the employer can summarily dismiss
 - (iv) If the evidence is not obvious, and the misconduct is not gross or its weight is not clear during the preliminary investigations, the proper notification is drawn. The notification commonly called a show cause letter must clearly spell out the intended ground for termination, being misconduct, poor performance or physical incapacity. the particulars must be clear enough for the employee to be able to effectively defend himself or herself. The notice must give the employee reasonable time within which to respond.

- (v) Upon responding or the time allowed lapsing, the employee should be called to hearing. At the hearing all the relevant information should be recorded in a fair process where the complaint is not leading or charging the proceedings. The employee should be given a chance to exculpate oneself. A third party of the employee's choice should be permitted to attend the hearing.
- (vi) A report of the hearing proceeding should be drawn and formally maintained by the employer as evidence of the due process, the report must set out the findings on the allegations, any mitigating or aggravating factors and the recommendation which may include termination.
- (vii) The decision made must then be communicated to the employee.

The contention by the defendant bank that it amounted to insubordination is not tenable also in the circumstances. The case of *Jane Frances Onrinde Munyakoh V. Imaging Solution Limited* Industrial cause number 1491 of 2011 2011 LLR 257 (ICK) (Mbaru J on 26th February, 2013).

- (a) That as a general principle, a breach of rules laid down on employer or refusal to obey an employer's lawful and reasonable order is to be viewed in serious light and may in given circumstances even justify summary dismissal.

However, the law requires that; the defiance must be 'gross' to justify dismissal. This means the insubordination must be serious, persistent, and deliberate, and that the employer should adduce proof that the employee was in fact guilty of defying an instruction.

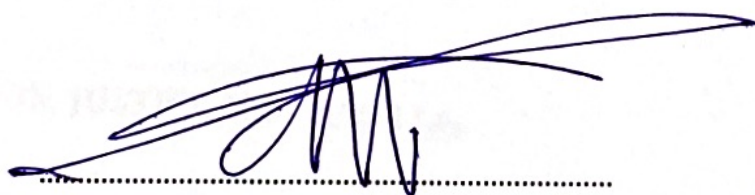
In fact, have been given in the second place, it is required that the order must be lawful, an employee is therefore not expected to obey unlawful order, such as to work illegal overtime, thirdly, the reasonableness of an order should be beyond and will be enquired into.

In addition, it is required that the refusal to obey must have been serious enough to warrant dismissal. (*Ntsibande V. Union Carriage & Wagon Co. (Pty) Ltd* (1993) 14 ILJ 1556 (IC) refused)

Consequently, it is without any doubt that the defendant bank through its governor and the letter of dismissal is without regard to the underlying contract of employment and not in sync with the practice and therefore consequently wrongful.

The plaintiff has proved its case on a balance of probabilities this court orders as follows:

- A declaration that plaintiff's employment service has been terminated with the said defendant on the 20th day of March, 2019 wrongfully
- This court further declares that the plaintiff resigned his employment services with the said defendant on the 5th day of March, 2019.
- Consequently, the plaintiff is entitled to the recovery of severance benefits less the three (3) months in lieu of Notice for a period of eight (8) years estimated at Le179,129,547.40 (One Hundred and Seventy-nine Million One Hundred and Forty-seven Leones Forty Cents)
- Recovery of 26 unused leave days estimated at Forty-two Million Three Hundred and Thirty-nine Thousand Seven Hundred and Eleven Leones Twenty Cents) Le42,339,711.20.
- Interest on the said sums from the 6th day of March, 2019 until judgement.
- Solicitor's costs of Nle50,000 (Fifty Thousand New Leones)
- Costs of the action at Nle50,000 (Fifty Thousand New Leones)
- The aforesaid sums be paid within sixty (60) days effective this judgement.



THE HON. JUSTICE M.P. MAMI J.A.