

IN THE HIGH COURT OF SIERRA LEONE

(INDUSTRIAL AND SOCIAL SECURITY DIVISION)

IN THE MATTER OF THE EMPLOYMENT ACT NO.15 OF 2023

AND

IN THE MATTER OF CONVENTION 095-PROTECTION OF WAGES CONVENTION
1949 (NO.95)

AND

IN THE MATTER OF AN APPLICATION UNDER THE INTERNATIONAL COVENANT
ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

AND

IN THE MATTER OF AN APPLICATION UNDER ORDER 5 RULE 4 OF THE HIGH
COURT RULES 2007, CONSTITUTIONAL INSTRUMENT NO.8 OF 2007

IN THE MATTER OF AN APPLICATION FOR THE CONSTRUCTION AND
DETERMINATION OF ENACTMENT, CONTRACT AND OTHER DOCUMENTS

BETWEEN:

FELIX BERETHE & 50 OTHERS - PLAINTIFFS

AND

STANDARD CHARTERED BANK - DEFENDANT

SIERRA LEONE LIMITED

COUNSEL:

O. Jalloh Esq. for the Plaintiffs with him Z.D. Kamara (Ms), I Williams (Ms), A. Kamara Esq. & M. Bah Esq.

R. Johnson Esq. for the Defendant with him J. Benjamin (Ms) and C. I. Pateh Bah Esq.

**JUDGMENT DELIVERED THIS 23RD JANUARY 2024 BY HONOURABLE MRS. JUSTICE
JAMESINA E. L. KING J. A.**

Background

This action was instituted by an Originating Summons dated 3rd August 2023 by Felix Berethe & 50 other named employees (the Plaintiffs) against Standard Chartered Bank Sierra Leone Limited (the Defendants) for the construction and or determination of the following questions:

1. Whether a redundancy occurred in accordance with the provisions of the Employment Act No.15 of 2023 due to the sale and divestiture of the Defendant's commercial banking subsidiary in Sierra Leone to Access Bank and in the light of the Defendant's failure to make appropriate provisions for the employment status of the Plaintiffs?
2. If the answer to question 1 is affirmative, does the obligation arise pursuant to relevant provisions, including section 82 (1) (d) of the Employment Act 2023, and considering the positions of the respective Plaintiffs, being at or above supervisory level and not subject to any Collective Agreement provisions within deposit-taking institutions (banks), requiring the Defendant to engage in negotiations for redundancy compensation packages favourable to the Plaintiffs, exceeding the minimum threshold established by the Trade Group Negotiating Council and outlined in the Trade Group Collective Bargaining Agreement between Employers in the Commercial Banking Trade Group and the Clerical Insurance Banking Accounting, Petroleum, Industrial & Commercial Employees Union (CIBAPICE Union), and subsequently, to disburse the mutually agreed upon amount to each of the Plaintiffs?
3. Whether the operation of a provident fund, wherein both the Plaintiffs and the Defendants contributed, legally negates the Defendant's obligation to fulfil the Plaintiffs' end of service benefits or severance pay, as stipulated by section 80(1) of the Employment Act No. 15 of 2023?
4. Whether the provisions of inter alia section 80 (1) of the Employment Act No. 15 of 2023 establish an entitlement for the Plaintiffs, who have served the Defendant either on a full-time or part-time basis, to receive end of service benefits or severance pay, upon the closure of the Defendant's operations in Sierra Leone, distinct and separate from their entitlements related to the internal Provident Fund and redundancy compensations?
5. If the answer to question 3 is affirmative, whether the Defendants are legally bound to engage in negotiations for the rates of end of service benefits or severance pay to be disbursed to the Plaintiffs, aimed at establishing a fair compensation rate exceeding the minimum requirements stipulated for employees being at or above supervisory levels?
6. Whether in cases of conflict between the standards and policies of the Defendants and the laws of Sierra Leone, should the Plaintiffs be entitled to the more favourable provisions, and whether it is legally incumbent upon the Defendant to fully comply with and implement these provisions?

7. Whether by virtue of the Plaintiffs having served diligently in the employment of the Defendant and the Group full time or part time and now being rendered redundant without clear prospect of reengagement by the new owners they are entitled to receive reference letters from the Defendant?

The Plaintiffs have applied that consequent upon the construction /determination of the questions set out above that the Honourable Court grants the following reliefs:

- i. If the answer to questions 1 and 2 are in the affirmative, that the Honourable Court grants an order declaring that a redundancy has occurred with regards to the Plaintiffs.
- ii. If the answers to questions 1 and 2 are in the affirmative that this Honourable Court grants an order declaring and directing that the Defendant is obligated to negotiate favourable compensations with the Plaintiffs for redundancy payments and for the same to be paid immediately.
- iii. If the answers to question 3 and 4 are in the affirmative, that this Honourable Court grants an order declaring that the Plaintiffs having served in the employment of the Defendant full time or part time for a period of over one year, are entitled to be paid out of service benefit or severance pay in addition to or separate and distinct from their entitlements to Provident Fund and redundancy compensations.
- iv. If the answers to questions 3 and 4 are in the affirmative, this Honourable Court directs and sets favourable rates of end of service benefits or severance pay to be paid to the Plaintiffs and for the same to be paid immediately.
- v. Given the nature of the matter and the imminent departure of the Defendant from the jurisdiction of Sierra Leone that this Honourable Court sets the threshold for the various rates of redundancy compensation and end of service benefits to be paid to each of the Plaintiffs guided by the rates set out in the affidavit in support of this application.
- vi. That an injunction be granted restraining the Defendant whether by itself, its Groups, shareholders, officers, attorneys, professional advisers, servants, agents, privies and/or any person or authority who shall possess direct or indirect right, power or authority or howsoever otherwise called from taking, continuing with, or proceeding with any or further steps or action that would result in the full, final and complete sale and divestiture processes of Standard Chartered Bank Sierra Leone Limited to new owners, the transfer of shares to the new owners, its physical and/or liquid assets or any other assets owned in Sierra Leone, including regulatory approval of the Central Bank of Sierra Leone, the Corporate Affairs Department, the Financial Intelligence Unit or any other regulatory authority responsible for regulating, overseeing or supervising commercial banks in Sierra Leone and/or for any new owner be, or being recognized by the regulatory authorities in Sierra Leone, without the provision of security in regard the Plaintiffs' claim in this action.

- vii. If the answer to question 7 is in the affirmative, that this Honourable Court declares and directs that the Defendant issues out reference letters to the Plaintiffs
- viii. Any further Order(s)/relief(s) that this Honourable Court may deem fit and just.
- ix. That the costs of and incidental to the action /cause herein be provided for the same to be borne by the Defendant.

The application is supported by the joint affidavit of Felix Berethe, Henry Saffa, Ajibu Jalloh and Crispin Kaikai sworn to on 3rd August 2023 with the exhibits attached thereto. Subsequently, the Plaintiffs had further affidavits with a number of exhibits filed on their behalf mainly the joint affidavits of Felix Berethe, Henry Saffa, Ajibu Jalloh and Gloria Renner sworn to on 30th August 2023, of Felix Berethe, Henry Saffa, Crispin Kaikai and Gloria Renner sworn to on 6th December 2023 and that of Ida Williams sworn to on 8th December 2023.

The Defendant entered an appearance to the Originating Summons. There is also filed affidavits in opposition on behalf of the Defendant sworn to by Mariama Kamara on 29th November 2023, 15th December 2023 and 11th January 2024 respectively with the exhibits attached thereto. Subsequently further affidavits were filed on behalf of both parties.

Several interlocutory applications were made and determined namely for an interim injunction in respect of Order VI prayed for above, for leave to issue a concurrent Originating Summons, for a stay of execution and leave to appeal and for the Notice of the concurrent Originating Summons to be struck out. Hon. Justice H. Bonnie J sitting as a vacation judge granted the orders in respect of the first two applications before this matter was assigned to me and I granted the orders in respect of the latter two applications. Thereafter, hearing proceeded with the substantive matter and multiple affidavits were filed by both parties.

Analysis & Decision

In relation to the substantive matter, both Counsel addressed the Court on the questions posed for determination, most of which had been resolved by the passage of the Employment Act and Regulations of 2023, the latter having provided the rates to be applied in the calculation of the benefits due the Plaintiffs.

I will refer to the order of this Court of 23rd October 2023 in which the Defendant/Applicant was ordered to pay the sum of NLE100,000,000.00 (One Hundred Million New Leones) being USD\$4,464,286 (Four Million Four Hundred and Sixty-Four Thousand Two Hundred and Eighty Six United States Dollars) at the rate of Le22.4 New Leones into an interest bearing account in the Defendant Bank to be managed by both Solicitors for the parties. It was further ordered that subject to the Defendant's compliance with the aforesaid order, it can proceed with its divestiture processes and regulatory approvals leading to completion of the sale of its shares of its majority shareholders to Access Bank SL Ltd.

Of paramount significance to this matter was the passing of the Employment Regulations Statutory Instrument No. 10 of 2003 published as a supplement to the Sierra Leone Extraordinary

Gazette Volume CLXIV, No. 64 dated 18th October 2023. The Second Schedule to the said Regulations provides multipliers to be used in the calculation of redundancy compensation and end of service benefits. Furthermore, the Ministry of Labour and Social Security confirmed in writing that the rates provided in the said Regulations are to be calculated using the basic salary and for each completed year of service.

What then ensued during the hearing, were tedious back and forth calculations by the parties of the redundancy compensation and end of service benefits to which each of the 51 Plaintiffs will be entitled to for the periods ending 31st December 2023, 30th June 2024 and 31st December 2024. These were evidenced in the several affidavits filed by the parties.

In order to resolve the differences arising from the several calculations by both sides presented to the Court, this Court ordered a meeting of the parties Solicitors, representatives of the parties and experts. The outcome which was reported to the court by both Counsel is set out in the affidavit of Ransford Johnson sworn to on 23rd January 2024 which states as follows:

"1. That I am a Partner in the Firm of Lambert & Partners and I am duly authorized to make this affidavit on behalf of the Defendant herein.

2. That on the 18th day of January 2024, Felix Berethe and Henry Saffa, the 1st and 2nd Plaintiffs (representing all of the Plaintiffs herein), and their Solicitors Messrs OJP Legal of the one part and the Chief Executive Officer, Country Head of Compliance and Country Head of Human Resources of the Defendant and their Solicitors Messrs Lambert & Partners of the other part met and resolved all of their differences on matters pertaining but not exclusively limited to the calculation of redundancy compensation and end of service benefits to which the Plaintiffs would be entitled to upon completion of the divestment and the eventual termination of their employment by reason of redundancy.

3. With respect to the Provident Fund Scheme (the "Scheme") contributions, the Defendant is resolving to liquidate the Provident Fund Scheme at the end of February 2024. As of 1st March 2024 there will be no more contributions in to the Scheme by both the Plaintiffs and Defendant. Upon closure of the Scheme the same will be audited and thereafter payment of the contributions will be made as soon as reasonably practicable to all staff of the Defendant, including the Plaintiffs. At this stage, the Scheme figures are provisional and will be settled or confirmed after the said audit. A copy of the revised spreadsheets for June 2024 and December 2024 containing the agreed redundancy compensation and end of service benefits and the provisional Scheme calculations are now produced shown to me and marked Exhibits "RJ1" and "RJ2" respectively".

This Court having confirmed that the agreed final figures in Exhibits RJ1 and RJ2 respectively are accurate, the outstanding issues for resolution are the Plaintiffs request for immediate payment of their entitlement for the period ending 31st December 2023 to be paid out of the funds in the

Court's designated accounts and the rest to be paid before the Defendant leaves Sierra Leone, and the issue of costs. The Plaintiffs' Counsel claims significant costs and the Defendant Counsel says either parties should bear their costs or the Plaintiffs should bear the costs of the action.

Both Counsel made submissions to this Court on the issue of costs. Counsel for the Defendant argued that if the Plaintiffs had waited for the passage of the Regulations, which provided the multipliers to be applied, litigation would have been unnecessary. On the other hand, Counsel for the Plaintiffs invited the Court's attention to Order 57 Rule 2 (4) of the High Court Rules 2007 and submitted that costs should follow the event and the Defendant should bear the costs who but for its actions and inaction the Plaintiffs would not have had to come to court.

On the issue of the immediate payment of part of the entitlements of the Plaintiffs due in December 2023, this cannot be granted as the same will only be due on redundancy which has not yet occurred. It is only on completion of such processes to complete the sale and transfer of shares of the Defendant to the new owners, Access Bank, including the regulatory approval of the Central Bank of Sierra Leone, Corporate Affairs Department, the Financial Intelligence Unit and any other regulator that an automatic redundancy will be triggered. (See section 70 (2) of the Employment Act 2023). The Plaintiff's entitlements will only become due and payable when the redundancy actually occurs. Redundancy is envisaged to occur in June or December 2024 and the necessary agreed calculations have been done for both scenarios. I note that should the Provident Fund Scheme be closed in February 2024 as proposed, the employee contributors including the Plaintiffs will receive immediate payment under the Scheme.

On the issue of costs, much as I agree that the Defendant's disposition was to pay the Plaintiffs what was due them by law and to provide the necessary letters of reference, this had not been effectively communicated to the Plaintiffs. Unclear about their employment status with the onset of the looming redundancy, the Plaintiffs instituted action. At the time of the action, there were still issues in contention, mainly resolved by the enactment of the Employment Regulations 2023 which came thereafter.

The passage of the Regulations was not within both parties control, however, I am of the firm view that it was due to the uncertainty about their status and the need to secure their entitlement that resulted in litigation. I therefore hold that the Plaintiffs are entitled to reasonable costs of the action which must be borne by the Defendant. In determining costs, consideration should be given to the fact that the dispute between the parties was resolved in part by the Regulations that provided the multiplier to be applied in the calculations of the benefits due the Plaintiffs. Much work was done by both sides and this Court is grateful for the efforts and assistance of both Counsel and their teams. However, had it not been for the efforts of Counsel for the Plaintiffs who instituted the action in August 2023 and vigorously pursued it, I doubt whether the Plaintiffs would have had the certainty of protection of their rights and assurances of their entitlement they were seeking prior to litigation.

Conclusion

In view of the above I am satisfied that the Plaintiffs have proved their case on a balance of probabilities and will refer to the questions posed by the Plaintiffs and answer them as follows:

1. Question 1 is answered in the affirmative.
2. Question 2 is answered in the affirmative.
3. Question 3 is answered in the negative.
4. Question 4 is answered in the affirmative.
5. Question 5 has been addressed by the Employment Act and Regulations 2023.
6. Question 6 is answered in the affirmative.
7. Question 7 is answered in the affirmative.

In the result Judgment is granted in favour of the Plaintiffs and I hereby order as follows:

1. The Court declares that a redundancy is bound to and shall occur with regard to the Plaintiffs in June 2024 or in December 2024.
2. The Employment law and Employment Regulations 2023 have overtaken events and settled compensation with respect to end of service benefits and redundancy compensation thereby making negotiations on this issue unnecessary.
3. The Court declares that the Plaintiffs are entitled to end of service benefits or severance pay in addition to or separate and distinct from their entitlements under the Provident Fund and redundancy compensation.
4. In the event that redundancy occurs in June 2024 the Plaintiffs shall cumulatively be entitled to end of service benefits in the sum of NLE 30,570,189.44 and redundancy benefits in the sum of NLE33, 206,039.44.
5. Should the redundancy occur in December 2024 the Plaintiffs shall be entitled to end of service benefits in the sum of NLE33, 375, 537.38 and redundancy benefits in the sum of NLE43,454,257.47.
6. Exhibits RJ1 & 2 attached to the affidavit of Ransford Johnson sworn to on 23rd June 2024 comprising of the agreed redundancy compensation and end of service benefits should it occur in June or December 2024 excluding the provisional scheme calculations are adopted as part of this judgment.
7. Based on the order of this Court dated 23rd October 2023 end of service benefits, redundancy compensation and benefits from the provident fund due the Plaintiffs and costs incidental to this action shall be paid from the escrow account held at the Defendant's bank for that purpose.
8. The Plaintiffs are entitled to be paid Provident Fund benefits immediately upon liquidation of the said Fund.
9. The final figures for such benefits from the Provident Fund are to be agreed on by the Solicitors of the parties. The Defendant is to provide the governing rules and documents for the Provident Fund to Solicitors for the Plaintiffs forthwith.

10. The Defendant shall give the Plaintiff's Solicitors a month's notice prior to the redundancy and both Solicitors shall engage on the disbursement from the said account in accordance with this order.
11. Costs to the Plaintiff to be assessed by the Court on 7th February 2024.
12. Liberty to apply.


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HON. MRS. JUSTICE JAMESINA E. L. KING J. A.