Magdalene G. Harris of the city of Monrovia Appellant versus **Mercy Corps/Liberia** of the city of Monrovia, Liberia Appellee

APPEAL FROM THE NATIONAL LABOR COURT FOR MONTSERRADO COUNTY

Heard: 17 October 2006 Decided: 21 December 2006

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

On 31 October 2002, Mercy Corps, appellee, entered into a one-yea contract of employment with Magdalene G. Harris, appellant, effective 31 October 2002 and ending on 30 October 2003, at the monthly salary of Nine Hundred United States Dollars (US$900.00). By letter dated 7 February 2003, appellee, relying on .section VII, clause 7.1.1 of the contract of employment, terminated the employment of the appellant, effective 8 February 2003.

Section VII, clause 7.1 of the contract of employment, under Termination of Employment Relationship, provided:

"The parties agree that this contract of employment may be terminated prior to its expiry under the following terms and conditions:

"7.1.1. It may be terminated by either party hereto at any time, subject only to giving, by the party desiring to effect the termination of a one-month written notice to the other party or in case of the employer, the employer may pay the employee one month's compensation in lieu of such notice."

Not being satisfied with the termination of her contract of employment, appellant, by and through her counsel, Counselor Marcus R. Jones, wrote appellee protesting the termination of appellant's contract of employment, and pointing out that clause 7.1.1 of the contract of employment was in violation of the Liberian Labor Law, and that therefore the termination of appellant's contract of employment was illegal and wrongful. The appellee, by and thru Sherman and Sherman, its legal counsels, disagreed with the position of counsel for appellant, and maintained that clause 7.1.1 of the contract of employment was in line with the Labor Law which provide that a termination period may be indicated.

On 17 February 2003, the appellant filed a complaint, Unfair Labor Practice/Wrongful Dismissal, with the Ministry of Labor. At the conference level, both parties maintained their respective positions regarding the legality of clause 7.1.1. of the contract of employment. At a full hearing conducted by Yamie Q. Gbeisay, Sr., Hearing Officer, the appellant testified. Appellee waived the production of evidence, maintaining that there were no facts in dispute, and that under clause 7.1.1. of the contract of employment, the termination of the appellant's employment was proper and legal.

On 18 February 2004, Hearing Officer Gbeisay rendered a final ruling in which he held:

"In view of the fact that § 1508(1) unequivocally provides that gross breach of duty and the total lack of capacity to perform are the only grounds upon which an employee of a definite period can be dismissed, and this being not alleged by the defendant/management, and considering that § 1503(1)(e) provides for notice period for termination of a written contract and not early
termination of a contract which already had a definite period of termination stated therein as in the instant case, and considering that the contract under review was presented by the defendant/management to the wrong person at the Ministry of Labor, it can be said that the dismissal of Mrs. Magdalene Harris under clause 7.1.1 of the contract is indeed illegal and wrongful. It is our opinion that she be paid in full the time she worked and the remaining nine months on the contract of October 31, 2002."

The appellee excepted to the ruling of the Hearing Officer, and on 27 February 2004, filed a Petition for Judicial Review with the National Labor Court, Montserrado County. Following a hearing, the National Labor Court, on 15 November 2004, relying on § 1801(1) of the Labor Law, reversed the decision of the Hearing Officer and dismissed the complaint.

To this ruling appellant Harris took exceptions, and announced an appeal to this Court.

The one issue determinative of this appeal is whether an employer, bound to an employee by a contract of employment for a definite period, may rely on § 1503(e) of the Labor Law and dismiss the employee, without cause, prior to the end of the definite period?

Section 1508 of the Labor Law, on Dismissal of Employees, provides:

"1. No employer shall dismiss any employee with whom he is bound by a contract for a definite period before the end of that period unless it is shown that the employee has been guilty of gross breach of duty or a total lack of capability to perform. Where this has not been proven, the dismissed employee shall be entitled to claim full remuneration for the unexpired portion of the contractual period.

"2. The following acts and violations shall be deemed to be gross breaches of duty (without limiting the generality of the term) within the meaning of section 1 of this Chapter and shall dispense the employer from payment of compensation for dismissal under the provisions of that section:

"(a) Any provoked assault by an employee upon the employer or hi.: agents in the course of or arising out of employment;

"(b) Persistent disregard by any employee of the technical measures for safety of the staff of the undertakings; provided that the said measures have been in rules posted as required by law and the employer or his agent has ordered the employee in writing to comply with the said rules;

"(c) Disclosure by an employee of the working secrets of the employer's undertaking;

"(d) Absence of an employee for more than ten consecutive days (or more than 20 days over a period of six months) without good cause, in which case the employee shall be deemed to have terminated his contract. Save in such case of vis major, an employee shall be required to notify the employer or his agent of the reason for his absence."

We hold that an employer, bound to an employee by a contract of employment for a definite period, may not dismiss that employee before the end of that period unless it is shown that the employee has been guilty of gross breach of duty or a total lack of capacity to perform. As this has not been shown in this case, Magdalene G. Harris, appellant, is entitled to full remuneration for the unexpired portion of the contractual period. *Bong Mining Company v. Kortuguwor and the Board of General Appeals,* 29 LLR 363, 368-369 (1981); *Liberia Port Storage Company v. Osabutey,* 33 LLR 506, 510-511 (1985); *The Liberian Bank for Development and Investment (LBDI) v. York and Brown,* 35 LLR 155, 166 (1988).

From the records in this case, the unexpired portion of the contractual period was nine months; at Nine Hundred United States Dollars (US$900.00) per month, the full remuneration for the unexpired portion of the contractual period is Eight Thousand One Hundred United States Dollars (US$8,100.00).

The appellee has relied on § 1503(e) of the Labor Law to justify not only its act in dismissing the appellant, without cause, before the end of the definite period stated in the contract of employment, but has relied on the same section to justify the inclusion of clause 7.1.1 in the contract of employment.

We hold that the inclusion of any clause, as clause 7.1.1, in any contract of employment for a definite period violates § 1508(1) of the Labor Law, and such clause is void *ab initio.*

The appellee, arguing before this Court, contended that § 1508(1) of the Labor Law applies only in instances where the contract of employment does not provide for, or contain the appropriate period of notice to be given by the party wishing to terminate the contract as required by § 1503(1)(e). We disagree with this contention.

We hold that the language of § 1508(1) is clear and unambiguous, as was the intent of the Legislature. This Court, therefore, will enforce § 1508(1), and will strike down any provision of a contract of employment for a definite period which attempts to circumvent § 1508(1).

The appellee has contended, also, that the contract of employment executed by and between the appellee and the appellant is an assent of two minds for either party to terminate said contract upon compliance with a certain condition precedent, i.e. the giving of 30 days notice to the other party or payment of one-month salary in lieu of notice if the terminating party is the employer. In advancing this argument, the appellee relied on *Nagbe v. Sherman,* 34 LLR 126, 128 (1986), which held that "a contract is an assent of two or more minds to do or not to do a certain act which courts of justice do not make for parties, but enforce it."

We affirm the principle in *Nagbe,* but we hold that this Court will not enforce a clause in a contract of employment which is in violation of a provision of the Labor Law. Our duty is to interpret and enforce laws foremost.

The appellee has contended, lastly, that appellant being a voluntary party to the contract of employment, and having received consideration under said contract,

cannot now seek the aid of the court in order to benefit from the alleged illegal contract. In making this argument, the appellee has relied on *Cooper-Daniels and Luke v Buccimazza Industrial Works Corporation,* 33 LLR 557, 563 (1985) which held: "Agreements are binding and one who is voluntarily a party thereto for consideration, however, small or violative of the law, cannot impeach his own deeds by raising issues as to its illegality after enjoying said consideration."

We affirm, also, the principle in *Cooper-Daniels and Luke,* but we hold that it is inapplicable in this case. The contract of employment executed by and between the appellee and the appellant is not illegal. It is only clause 7.1.1 of the contract which violates § 1508(1) of the Labor Law, and thus it is that clause which is void *ab initio.*

"The rule with respect to agreements in violation of statute is that if any part of an agreement is valid, it will avail *pro tanto,* though another part of it may be prohibited by statute, provided the statute does not, either expressly or by necessary implication, render the whole void, and provided the sound part can be separated from the unsound part and enforced without injustice to the defendant." 17A Am Jur 2d *Contracts,* § 329.

We hold that the sound part of the contract of employment between Mercy Corps, the appellee, and Magdalene G. Harris, the appellant, can be separated from the unsound part, and enforced without injustice to the appellee.

In view of the foregoing, the Judgment of the National Labor Court reversing the judgment of the Hearing Officer and dismissing the complainant's complaint is hereby reversed, with the appellant entitled to full remuneration for the unexpired portion of the contractual period of nine months. Costs are ruled against the appellee. The Clerk of this Court is hereby ordered to send a mandate to the National Labor Court commanding the judge therein to resume jurisdiction, and to give effect to this decision. It is so ordered.
Judgment reversed.