



**[2]** On 13<sup>th</sup> June 2018 plaintiff received a memo issued by the Director of Finance of the Defendant company requesting plaintiff to respond to an issue that has been discovered by an Audit Team to the effect that plaintiffs obtained multiple special salary advance for a period of nineteen months from February 2013 to August 2014. Plaintiff responded to the said memo in which she stated that per the conditions of service applicable to her, she was entitled to take multiple special salary. She stated further that the Form used for special salary advance was indicative that several loans could be taken by a staff. She argued that by her rank she was a member of the Senior Staff Association and therefore her query letter ought to have been written by a supervisor (manager) in accordance with the Conditions of Service.

**[3]** On the 16<sup>th</sup> of October, 2018 plaintiff received an email inviting her to appear before a disciplinary committee set up by the Chief Executive to investigate the matter. It was at the committee's hearing that she got to know for the first time that she had been accused of manipulating the company's systems to enable her and others to obtain multiple special salaries when they were not entitled to same. She subsequently received a letter terminating her employment with the defendant. That she petitioned management for a review of their decision dismissing her from the company's employment. The company's response was that the punishment of dismissal had been mitigated to termination.

**[4]** Aggrieved by the decision of the defendant which she deemed unlawful, plaintiff commenced the action that has culminated into this appeal before the High Court for the following reliefs:

- (a) A declaration that the termination of Plaintiff's appointment by the Defendant is wrongful*
- (b) An order to reinstate the Plaintiff to the current position and rank of her mates*

- (c) Payment of all arrears of salary as well as other benefits due the Plaintiff*
- (d) Damages for wrongful termination of Plaintiff's appointment by the Defendant and*
- (e) Cost including legal fees.*

**[5]** Defendant fiercely resisted the claim and asserted that the conduct of the plaintiff fell squarely under the rubric of "intolerable offences" in the company's Conditions of Service and that they had been magnanimous in converting the punishment of dismissal to termination.

**[6]** At the close of pleadings the following issues were set down for trial.

- a. Whether or not the termination of the appointment of the Plaintiff by the Defendant was unlawful*
- b. Whether or not the Senior Staff Association Conditions of Service of GRIDCO 2017 is applicable to the Plaintiff*
- c. Whether or not the disciplinary procedure under GRIDCO Senior Staff Condition of Service 2017 was properly adhered to by the Defendant Company.*
- d. Whether or not the Defendant is liable for damages for wrongful termination of appointment of the Plaintiff*
- e. Whether or not the letter terminating the Plaintiff's appointment signed by the C.E.O Mr. Jonathan Amoako- Baah emanated from any management meeting.*
- f. Any other issues arising out of the pleadings and*
- g. Whether or not the Defendant is a public or a private company.*

## JUDGMENT OF THE TRIAL COURT

[7] After full trial, the court below on the 22nd day of September, 2023 gave judgment in favour of the defendant by dismissing plaintiff's case, as Plaintiff had failed to discharge her burden of proof and of persuasion to impose on her by law. The court held further that in any case defendant had complied with other conditions of termination of employment by issuing a letter of termination to the Plaintiff which specified that her termination would take effect at a later date which was more than one month as required by the Labour Act.

## CONSIDERATION OF THE APPEAL.

[8] Dissatisfied with the decision of the trial court, plaintiff filed the instant appeal. In it she set out the following grounds:

## GROUNDS OF APPEAL

- a. The Judgment is against the weight of evidence adduced before the court.
- b. The trial Judge misdirected himself in law.

### Particulars of Misdirection

- a. The trial Judge erred in his interpretation and application of Exhibit D.
- b. The trial judge erred when he failed to apply the rules of interpretation of document in dealing with Exhibit 'D'.

### ***Ground 'a'.***

***"The Judgment is against the weight of evidence adduced before the court."***

[9] Pleading the omnibus ground of appeal enjoins this appellate court to carefully review the entire record of appeal, and in particular, the evidence led

at the trial, vis-à-vis the applicable law to ascertain whether the judgment of the court below warrants a reversal. For this obligation to be discharged however, the appellant who alleges, that the judgment is against the weight of the evidence led at the trial is under an obligation to point out, and demonstrate to the appellate court which aspects of the judgment of the court below were in error. See ***Owusu-Domena vrs. Amoah*** [2015-2016] 1 SCGLR 790. Benin JSC delivered himself on behalf of the Supreme Court on the omnibus ground of appeal as follows:

*"The sole ground of appeal that the judgment is against the weight of evidence throws up the case for fresh consideration of all the facts and law by the appellate court. We are aware of the this court's decision in **Tuakwa vrs. Bossom** [2001-2002] SCGLR 61 on what the court is expected to do when the ground of appeal is that the judgment is against the weight of evidence. The decision in *Tuakwa v Bosom*, has erroneously been cited as laying down the law that, when an appeal is based on the ground that the judgment is against the weight of evidence, then, only matters of fact may be addressed upon. Sometimes, a decision on facts depends on what the law is on the point or issue. And even the process of finding out whether a party has discharged the burden of persuasion or producing is a matter of law. Thus where the appeal is based on the omnibus ground that the judgment is against the weight of evidence both factual and legal arguments could be made where the legal arguments would help advance or facilitate a determination of the factual matters."*

**[10] IN *Nortey (No. 2) vrs. African Institute Of Journalism And Communication & Others*** (No. 2), the Supreme Court delivered itself thus:

*"This court has stated in numerous cases such as *Tuakwa v. Bosom* [2001-2002] SCGLR 61, 65; *Quarcoopome v. Sanyo Electric Trading Co. Ltd* [2009] SCGLR 213, 229; *Oppong v. Anarfi* [2011] 2 SCGLR 556 that an appeal is by way of re-hearing, particularly where the appellant alleges as in the omnibus ground that the decision of the trial court is against the weight of evidence. In*

*such a case it is incumbent on an appellate court such as this, in a civil case, to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision so as to satisfy itself that, on a preponderance of probabilities, that the conclusions of the trial judge are reasonably or amply supported by the evidence”.*

**[11]** In *Solomon Tackie & Another vrs. John Nettey & Another* [2021-2022]<sup>1</sup> SCLRG 620, the Supreme Court gave some useful pointers to guide the courts in the exercise of their appellate jurisdiction where the appellant relies on the ground of appeal that ‘the judgment is against the weight of the evidence on record as follows:

*“In determining the ground of appeal that the judgment is against the weight of evidence, an appellate court must; (i) consider the case as one of re-hearing, which requires an evaluation of the entire record of appeal; (ii) **consider the reliefs claimed by the plaintiff and a counterclaim by the Defendant if any;** (iii) evaluate the evidence led by the parties and their witnesses in support of their respective cases, especially, the cross-examination, as this is the evidence which elicited from the parties and their witnesses after the tendering of the witness statements; (iv) evaluate the documents tendered during the trial of the case and assess how they affect the case; (v) evaluate the application of the facts of the case vis-à-vis the laws applied by the trial court and the intermediate appeal court; (vi) evaluate whether the trial court and Court of Appeal correctly or wrongly applied the evidence adduced during the trial; and, (vii) additionally, the burden on the final appellate court, such as the supreme court is generally to carefully comb through the record of appeal and ensure that both in terms of substantive law and procedural rules, the judgment appealed against can stand the test of time. In other words, that the judgment can be supported having regard to the record of appeal. The above criteria are by no means exhaustive, but constitute a useful guide to appellate courts in their determination of such appeals.”*

[12] My Lords the sound position of the law as distilled from the relevant cases is that where an Appellant charges that the judgment of the trial court is against the weight of evidence, there is a presumption that the judgment of the Court below on the facts is correct. The Appellant in such a case therefore assumes the burden of showing from the evidence on record that the judgment is indeed against the weight of evidence. See also ***Ampomah vrs. Volta River Authority*** [1989-90] 2 GLR 28-36.

[13] Accordingly, the onus falls squarely on the plaintiff as appellant herein to demonstrate that the lower court failed to take relevant matters into consideration, or relied on irrelevant matters, or misapplied or failed to apply the law in arriving at its decision.

[14] It is trite learning My Lords that as a court, the law imposes a corresponding burden on us to review the entire record and to the extent allowable by law put ourselves in the position of the trial court and answer the ultimate question; if we were sitting in the court below we would have come to the same decision as did the trial court? If the question is answered positively, then we will be right in dismissing the appeal and affirming the decision of the trial court and vice versa.

[15] Plaintiff's lawyer states the law clearly that with "*the above ground of appeal the Plaintiff/Appellant assumes the burden to show that the evidence given at the trial inclines in favour of the Plaintiff/ Appellant yet the trial judge found in favour of the Defendant/ Respondent.*" Appellant cites the ubiquitous case of *Djin vrs Musa Baako* [2007/08] SC GLR686 @ 687 in support of the above statement.

[16] The question that naturally flows from the above declaration is whether or not appellant herein has succeeded in discharging this clear burden imposed on her in this appeal?

[17] In our view a solitary question emanating from the facts and the law in this appeal is this: was the termination of the appellant's employment by the respondent fair? A resolution of this question will sufficiently dispose of the case before us as the other issues set down by the trial court will essentially flow from a determination of that central question. Admittedly some of those issues will naturally be resolved in the course of resolution of the central issue.

[18] My Lords since the plaintiff was found liable for dismissal and dismissed albeit that same was mitigated to termination by the defendant through the Chief Executive Officer, it is important to remind ourselves of the current position of the law on these two crucial concepts of fair and unfair termination pertaining to the law on employment relationship.

## **THE LAW**

[19] My Lords, we are fortunate to have the benefit of the excellently researched opinion of His Lordship Justice Pwamang JSC on the globally established dominant legal framework and jurisprudence relating to the rights of workers especially on presumption of security of jobs espoused in ***George Akpass vrs. Ghana Commercial Bank*** [2021] GHASC 80 dated 16th June 2021.

[20] Thus, even though the said decision is a minority opinion, the views expressed therein are by no means a minority position on the subject under reference globally, as stated above. The tenets expressed in the said opinion including those gathered from other comparable jurisdictions shall therefore serve as a veritable guide to us as we embark on this journey with the ultimate goal of rendering substantial justice by the parties.

**[21]** As already stated, the gravamen of plaintiff's case is that the termination of her employment by defendant was "*wrongful.*" It is vital to point out that the applicable statute which is the Labour Act, 2003 (Act 651) does not use the term 'wrongful' in relation to either dismissal or termination of employment. We are thus constraint to admonish counsel who accept to render legal service to their clients to note that before they commence an action in court they should thoroughly apply themselves to the applicable law and as much as possible adopt the words provided by the said legal framework especially where they relate to remedies provided by the law.

**[22]** Be that as it may, reading the proceedings as a whole, one can gather clearly that when the plaintiff claimed that her termination was wrongful, she essentially meant that same was unfair, a term preferred by the Labour Act. What then is the law on unfair termination.? We cannot however proceed unless we engage in a comparative exercise by comparing unfair termination with the term fair termination as both have been provided for by the Labour Act.

**[23]** This case calls for a detailed discussion of the evolution of employment law over the years to its present state as provided in the Labour Act. At the initial stages of the common law, labour relations were viewed as a contractual relationship between the worker and the employee. Like every contractual relationship either party could end it at any time. This is what is generally referred to as termination of employment.

**[24]** As it is well known, at common law the employer could dismiss the worker for valid reasons or terminate the employment because it no longer wished to work with that employee. In the same vein, the worker could also resign from the employment.

**[25]** Historically, the common law principles on employment were said to be influenced by conceptions that regarded the services a worker provided to her

employer as a commodity. The employer was seen as a master and the worker a servant. The relationship was thus a “master-servant” one. The master no doubt wielded the authority to dismiss his servant at ease. There was nothing the servant could do except to find her way out.

[26] Sir Otto Kahn-Freund, appropriately referred to as the ‘doyen of British Labour Law’, captures this concept in his priceless book titled “**Labour and the Law” (1972)** at p.8:

*“[T]he relation between an employer and an isolated employee or worker is typically a relation between a bearer of power and one who is not a bearer of power. In its inception it is an act of submission, in its operation it is a condition of subordination, however much the submission and the subordination may be concealed by that indispensable figment of the legal mind known as the ‘contract of employment.’”*

[27] My Lords countless case law has reflected the common law notion of employment as a master-servant relationship which can be terminated at will especially by the master that is, the employer. A few shall be cited here for their full force and effect.

[28] The English case of **Ridge vs. Baldwin [1963] APP.L.R 03/14**, offers an invaluable insight into the concept under reference. In it, the Law Lords held that:

*“The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none.”*

[29] In the Ghanaian case of **Aryee vs. State Construction Corporation [1984-86] 1 GLR 425 CA**, at page 432, Adade, JSC held thus:

*“It should be noted that a contract of service is not a contract of servitude. To say, as we are wont to do, that it gives rise to a master-servant relationship is to distort reality. The employee is not the servant; in the popular sense, of the employer. He is merely his employee. The contract*

*is framed in such a way that either party may bring it to an end and free himself from the relationship painlessly...without justifying his action to the corporation. He need not give any reason for his action nor is the corporation entitled, if he should give one, to satisfy itself that the reason is true or false, sufficient or insufficient, justified or unjustified. In the same way it would seem to us that the corporation need not assign any reason for choosing to terminate their contract with the defendant..."*

**[30] *Nartey-Tokoli & Ors vrs. Volta Aluminum Co Ltd* (1989-90) 2 GLR 341** has indeed captured the above declaration of the law as articulated by Osie-Hwere JSC that:

*"At common law there is no requirement that an employer should proceed in a particular manner before he dismisses an employee. There is no obligation to comply with the rules of natural justice: see Ridge v Baldwin [1964] AC 40, HL; and the failure to warn, consult or allow an employee to state his case prior to dismissal cannot affect the validity of his dismissal: see Pepper v Webb [1969], 2 All ER 216, CA and Wilson v Racher [1974] ICR 428..."*

**[31] *Kobeah And Ors. vrs. Tema Oil Refinery [2003-2004] 2 SCGLR 1039*** has been touted as a formidable authority that aptly captures this common law notion of labour relations. In this case, the Supreme Court speaking through Dr Seth Twum, JSC, stated at page 1040 that:

*" ...At common law, an employer may dismiss an employee for many reasons such as misconduct, substantial negligence, dishonesty, etc... these acts may be said to constitute such a breach of duty by the employee as to preclude the further satisfactory continuance of the contract of employment as repudiated by the employee... there is no fixed rule of law defining the degree of misconduct that would justify dismissal."*

**[32]** It is an established fact that this trajectory begun to take a different turn with the influence of the Industrial Revolution which enhanced human interaction for production of goods and services, the gradual expansion of civil rights in Western democracies and the growth of trade unionism, the fallacy of the theory of a worker's services as only a commodity traded on free terms and at arm's length with the employer became evident.

**[33]** This development led governments to pass legislations within a framework that totally shifted from the theory of equality of arms in negotiations of terms of employment contracts and offered protection to workers while accommodating the interests of employers.

**[34]** Over time, countries progressively enacted laws to address the obvious inequality inherent in the employer/employee relationship with the overriding object to obliterate the unequal bargaining power inherent in the employment relationship as articulated above. Currently, Labour laws effectively impose terms and conditions on the employment relationship except where the particular statute unless expressly provides that its provisions shall be subject to particular terms of employment contract.

**[35]** My Lords, Section 19 of Act 651 epitomises the conception of the law stated above. It provides:

***"19. Exception***

*The provisions of sections 15, 16, 17 and 18 are not applicable where in a collective agreement there are express provisions with respect to the terms and conditions for termination of the contract of employment which are more beneficial to the worker."*

**[36]** Section 19 must be read together with section 1 of Act 651. It provides that:

*"The Act applies to all workers and to all employers 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)."*

**[37]** A study of labour laws and best practices throughout many jurisdictions has revealed that current legal frameworks on labour relations have substantially, reduced the enormous authority that the employer had at common law, have been greatly either by contracts of employment negotiated on behalf of workers by strong trade unions or statutes passed by governments.

**[38]** Presently, certain concepts on labour matters have gained the status of international best practices and are promoted by the international labour movements in the form of international treaties ratified by many countries. Little wonder that the Memorandum to Act 651 that accompanied the Bill [now Act 651] captures the foregoing thus:

*"The purpose of this bill is to bring the existing enactments on labour into conformity with the Constitution and the several International Labour Organisation (ILO) Conventions to which Ghana is a signatory and to consolidate the several pieces of enactments on the subject into one statute."*

**[39]** My Lords we need to remind ourselves that the plaintiff herein was subjected to a process that the defendant deemed appropriate in view of the position it had taken on the "offence" allegedly committed by the plaintiff against the defendant. The defendant is understood to have held the view that if the allegations were proven it would lead to the dismissal of the plaintiff. Thus originally, the defendant did not envisage termination of plaintiff's employment should the allegations be proven. It is perfectly right to infer that if the defendant intended to terminate plaintiff's employment, the former would not have taken the later through the rigorous procedure she was subjected to.

**[40]** Indeed the trial court adopted this thinking of the defendant when he reasoned that the termination of plaintiff's employment was not wrongful because after all defendant was only mandated to give plaintiff one month notice if it intended to terminate the employment and that there was evidence before him that the letter of termination actually gave plaintiff one month notice. It bears emphasis to quote the trial court directly thus:

*"Again the defendant protected itself under Section 17 of the Labour Act on notice of termination of employment and took into account the Senior Staff Association Conditions of Service. Article 12:01 (a) is on Termination of Permanent Employee and it states:*

*"The Company may terminate the employment of a permanent Employee by giving the Employee at least one month's prior notice in writing or one month's pay in lieu of notice"*

*Exhibit 'F' is a copy of the termination letter of the Plaintiff. It is dated 28th February, 2019 and it states in the last but one paragraph that the termination takes effect from April 4th, 2019 which is well over a month's notice. This court therefore finds that the termination of the Plaintiff's appointment was lawful."*

**[41]** As we know, the Committee that investigated the allegations against the plaintiff stated that plaintiff was found to have engaged in a conduct that was classified in the conditions of service as constituting an "intolerable offence" and therefore recommended for the dismissal of the plaintiff. As things turned out, the plaintiff was informed that the punishment of dismissal had been mitigated to termination.

**[42]** Granted that the defendant could legally commute the punishment of dismissal to termination, which type of termination can it be said that in the circumstances of this case the defendant can be said to have adopted? Was it termination on stated grounds or termination by way of service of a notice where the contract of employment envisages it? My Lords the above question is

relevant in that there are indeed three main types of termination of employment as will be discussed in no time.

**[43]** Section 17 of Act 651 contains what I will call the traditional notion of termination where either party terminates the employment relation without assigning any reason or grounds for termination. It reads:

**“17. Notice of termination of employment**

***a. A contract of employment may be terminated at anytime by either party giving to the other party,***

***(a) in the case of a contract of three years or more, one month’s notice or one month’s pay in lieu of notice;***

***(b) in the case of a contract of less than three years, two weeks’ notice or two weeks’ pay in lieu of notice; or***

***(c) in the case of contract from week to week, seven days’ notice.***

**[44]** The second type of termination is as contained in part of Section 15 of Act 651. It provides:

**“15. Grounds for termination of employment**

**A contract of employment may be terminated,**

**a. by mutual agreement between the employer and the worker;**

**b. by the worker on grounds of ill-treatment or sexual harassment;**

**c. by the employer on the death of the worker before the expiration of the period of employment;**

**d. by the employer if the worker is found on medical examination to be unfit for employment”**

**[45]** My Lords it can be argued that the Act 651 appears to have adopted a third tier which is an authority given to the employer exclusively to terminate a

worker's employment on grounds provided by the Act. Section 15 (e) (i)(ii) reads:

**"15. Grounds for termination of employment ...**

**A contract of employment may be terminated,**

- (i) **by the employer because of the inability of the worker to carry out work due to...**
- (ii) **the incompetence of the worker; or**
- (iii) **the proven misconduct of the worker.**

**This is replicated under section 62 of Act 651 thus:**

"Section 62—Fair Termination.

**A termination of a worker's employment is fair if the contract of employment is terminated by the employer on any of the following grounds:**

- a. **that the worker is incompetent or lacks the qualification in relation to the work for which the worker is employed;**
- b. **the proven misconduct of the worker;**
- c. **redundancy under section 65;**

**[46]** It would appear that what is contained in Section (15) (1) (e) (ii)(iii) and section 62 above are known at common law as grounds for dismissal. Needless to say that Act 651 has avoided the term "dismissal". It is however safe to state that the third tier can be classified as termination in the nature of dismissal.

**[47]** What is clear is that where the employer intends to terminate the employment of a worker not by the traditional way or the tier one procedure, as stated above but by the second and third tiers where it intends to do so on stated grounds, then it is enjoined to comply with the relevant provisions of the law, including case law. Section 64 of Act 651 captures substantial part of the above vividly thus:

***"63 (4) A termination may be unfair if the employer fails to prove that,***

- a. ***the reason for the termination is fair; or***

***b. the termination was made in accordance with a fair procedure or this Act”.***

[48] What the above provision means is that the burden of proving that termination of employment on stated grounds is fair is squarely imposed on the employer. My Lords before we delve further into the above it is of vital importance to recap the law on termination of employment as far as it concerns the burden of proof in a court of law where, as stated, the cause of action concerns termination of employment on stated grounds prior to the enactment of the Act 651.

[49] Let us hear what Ollennu J. (as he then was) had to say on the law of burden of proof in relation to unlawful termination of employment prevailing at the time of rendering the judgment in the famous case of ***Morgan & Ors vrs. Parkinson Howard Ltd [1961] GLR 68 at p. 70***

*"In a claim for wrongful dismissal it is essential that the plaintiff should prove the terms of his employment and then prove either that the determination of the employment is in breach of the terms of his agreement, or that the determination is in contravention of the statutory provisions **for the time being regulating employment.** His claim cannot succeed if he fails to satisfy the court on these points."*

[50] Indeed, the trial court adopted the position of the law articulated in the *Morgan* case supra when it held that the burden of proof in all civil cases, employment cases not excepted is imposed on the plaintiff who alleges that termination of his employment is unlawful which we surmise he meant unfair. He held as follows:

***"The standard of proof required to discharge the burden of proof in civil cases is preponderance of probabilities. The party who bears the legal burden will lose if the Court decides that this required standard of proof has not been met. Section 12(2) of NRC 323 of 1975 states:***

*"Preponderance of probabilities means that degree of certainty of belief in the mind of the tribunal of fact the court by which it is convinced that the existence of a fact is more probable than its non-existence"*

**[51]** The trial court further relied on what I call the usual cases that have established that in civil litigation it is the plaintiff who bears the initial burden of proving her case. One of such cases is ***Takoradi Flour Mills Vrs Samir Faris*** [2005-2006] SCGLR @ 882 wherein it was held that:

*"In assessing the balance of probabilities all the evidence, be it that of the Plaintiff or the Defendant must be considered and the party in whose favour the balance tilts is the person whose case is more probable of the rival version and is deserving of a favourable verdict."*

**[52]** Section 14 of NRCD 323 also provides:

*"Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which it is essential to the claim or defence he is asserting."*

**[53]** In the words of the trial court the burden of persuasion as stated above is seen in Section 10(1) of NRCD 323 which states:

*"For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court"*

**[54]** Section 11(1) then also provides that:

*"For the purposes of this decree, the burden of producing evidence means an obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue"*

**[55]** Yet again Section 11(4) also states that:

*"In any other circumstance the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of a fact was more probable than its non-existence."*

**[56]** The court cited ***In Re Wa Na: Issah Bukari (Substituted By Mahama Bukari vrs. Mahama Bayong And Others [2013-2014] SCGLR SCLR@1590*** to buttress the position of the law set out above in relation to the burden of proof of the Plaintiff as follows:

*"The Evidence Act 1975 (NRCD 323) prescribes the procedure to be applied in every proceeding including inquires, investigations and hearing etc. it provides a useful guide as to the burden required to be discharged by a party to a dispute at a trial. Section 11(1) of NRCD 323 obliges a party to introduce sufficient evidence to avoid a ruling against him on an issue".*

**[57]** ***Duah vrs. Yorkwa [1993-94] 1 GLR @ 217 C.A.*** was also referred to by the trial court in its bid to fortifying itself on the position it had taken on the case of the plaintiff. In the said case the Court of Appeal speaking through Brobbey J.A (as he then was) stated as follows:

*"Considering the wording of Section 10(1) of NRCD 323 in the light of the Commentary on the Evidence Decree at pages 14-16. I am of the view that the expression "burden of persuasion" should be interpreted to mean the quantity, quantum, amount, degree or extent of evidence which a litigant is obligated to adduce in order to satisfy the requirement of proving a situation or a fact. The burden of producing evidence under Sections 11, 12, 13 particularly Section 11(1) of NRCD 323, the burden of producing evidence means the duty of obligation lying on the litigant to lead evidence" It is indeed this standard and burden of proof that this Court relied on in arriving at its decision."*

**[58]** The above led the trial court to hold thus:

***“The court therefore once again states that the Plaintiff failed to discharge her burden and therefore her reliefs are dismissed.”***

[59] My Lords, as stated earlier, Act 651 has completely changed the face of the law on the person who bears the burden of proof and by extension the burden of producing evidence at the initial stage. Fortunately, the Supreme Court has emphatically put the matter beyond doubt when their Lordships, speaking through Ansah JSC (of blessed memory), tutored in ***Kobi vrs. Ghana Manganese Co. Ltd [2007-2008] SCGLR 77*** at page 794 of the Report thus: *“The passing of the new Labour Act, 2003 (Act 651), has brought relief to the employee, for now there are statutory duties and rights of the employer and the employee. The right to terminate employment does not depend on the whims of the employer. Sections 62-66 of the Act are sub-titled; “Fair and Unfair Termination of employment”. And section 63 of the Act headed; “Unfair termination of employment” explains in its subsections (2)-(4) what constitutes unfair termination of employment. Thus, under section 64, termination may be unfair if the employer fails to prove that the reason for termination is fair, or it was made in accordance with a fair procedure under the Act.”*

[60] Thus, the above profound declaration was made by Ansah JSC after lamenting the insecurity of employment in Ghana on account of the common law that existed prior to the enactment of Act 651 which permitted an employer to terminate a worker’s employment for any reason or no reason and welcoming the protection of employment enacted in Act 651.

[61] What it means is that in determining the fairness or unfairness of a reason for termination, the court or any other tribunal with jurisdiction to determine labour disputes ought to have regard to the provisions of sections 8,9,10 and 11 of Act 651 on the rights and duties of workers and employers, the terms of the

contract of employment and all the circumstances of the case before coming to the conclusion whether the termination was fair.

[62] Indeed the imposition of the burden of proof on a defendant especially in labour matters is not new. The Supreme Court applied that principle in ***Total Ghana Ltd vrs. Thompson* [2011] 1 SCGLR 458** when, speaking through Anin Yeboah, JSC, (as he then was) stated as follows at page 463 of the report; *"We think that by its conduct of neither calling the police alleged to have investigated the complaint against the plaintiff nor the person who had allegedly made statements that had implicated the plaintiff, the defendants may be said to have admitted plaintiff's claim that the allegations made against him were untrue. In the particular context of this case, in our thinking, an obligation was placed on the part of defendant company to lead credible evidence to the trial court that would render the allegation on which its suspension of plaintiff was based, more probable than the version of a denial by plaintiff."*

[63] In that case, though Total Ghana Ltd was the defendant, it carried the burden of proof on the averments they made in their defence regarding the grounds for dismissal of the plaintiff. They tendered only the police investigation report without calling the investigator to testify, which the Supreme Court held did not amount to sufficient proof. See also the case of ***In Re Krah (Decd); Yankyeraah vrs. Osei-Tutu* [1989-90] 1 GLR 638, SC.**

[64] My Lords we are not oblivious of previous *ratio decidendi* of this court and the Supreme Court which are binding on us and which have held that in labour disputes as it is in nearly all civil matters the burden of proof and of persuasion are by law imposed on the worker who goes to court to challenge the termination of her employment as being, unlawful, wrongful or unfair. The mention of a few would suffice.

[65] In ***Adono vrs. Fan Milk Ltd*** (2006 8 MLRG @ 225-226) it was held that: *"It is not sufficient merely for a plaintiff to complain that he has been dismissed by his employer in circumstances which cannot be justified. He must go further to establish that by the dismissal, the employer contravened their mutual agreement or a particular statutory provision. In the absence of this, the action fails."*

[66] Aninakwa JSC in ***Kofi Senkyire vrs. Abosso Goldfields Ltd*** (2006) JELR 68386 (SC) held that; *"...it is well to bear in mind that in a claim for wrongful dismissal, the plaintiff must prove the terms of his employment and then prove that his dismissal is in breach of those terms."*

[67] See also ***Kobi & Ors vrs. Ghana Manganese Co Ltd*** [2007 - 2008] 2SCGLR 771 at page 786. By far the ratio in the recent case of ***Tagoe vrs. Accra Brewery Ltd*** [2017-2020]1SCGLR 820 at page 828 is most emphatic on the matter. In that case, the Supreme Court held that *"In a claim founded on wrongful termination of employment contract, the Plaintiff assumed the initial burden of producing evidence to satisfy the court about his terms of employment and also that the termination of his appointment was contrary to the terms of his employment or existing law. The Defendant would then be obliged to produce evidence to justify the termination."*

[68] It can be observed that the pronouncements on the burden of proof contained in the above cases were made after the enactment of the Labour Act in the year 2003. I think they were inspired by the compelling force of Ollennu J's (as he then was) memorable dictum in ***Morgan And Others vrs. Parkinson Howard Ltd*** [1961] GLR 68 at 70 in which he had eminently proclaimed that in a labour dispute:

*"...Plaintiff assumed the burden of proving the terms of his employment that the determination was in breach of the terms of the agreement, or in contravention of statutory provisions for the time being*

***regulating employment.*** *If a plaintiff fails to satisfy the court on these points his/her claim cannot succeed”.*

[69] One cannot however gloss over the obvious proviso-highlighted in the quote- issued by Justice Ollennu known for his remarkable ingenuity on the bench – What this means is that should any law change the law existing at the time the pronouncement was made, that new law on who bears the burden should prevail. As anticipated by Justice Ollennu the Labour Act enacted in the year 2003 has, particularly under Section 64 thereof completely changed the face of the law which governed labour disputes prior to the enactment of the Labour Act, on the person who bears the initial burden of proof and of persuasion.

[70] Furthermore, it ought to be emphasised that section 17 of Act 323 has a proviso to the general rule thus: **“except otherwise provided by law”**. In this instance Act 651 has specifically placed the burden on the employer to prove that the termination of the employment of a worker is fair. That would mean that it is the employer and not the worker who ought to give the actual reason for the termination where it is on stated grounds and further proof that it is fair. Section 64 of the Act bears repeating.

***“(4) A termination may be unfair if the employer fails to prove that,***

- a. ***the reason for the termination is fair, or***
- b. ***the termination was made in accordance with a fair procedure or this Act. (emphasis supplied).***

[71] It needs to be pointed out however that the employer does not assume the the duty to establish whether the termination is fair unless the plaintiff has set out some basic facts on which she has founded her claim that the termination was unfair.

[72] Another aspect of the law on labour disputes which has aroused my keen interest is on the procedure for dismissal of a worker on the allegation of having committed a crime against the company. Authorities abound to the effect

that when an employee has been found to have engaged in gross misconduct, even a summary dismissal would not always be considered a breach of the fair hearing principles.

[73] The famous dicta in the following cases are usually cited in support of the above principle. They are: ***Bani vrs. Maersk Ghana Limited*** [2011] 2 SCGLR 796 and ***Gavor vrs. Bank Of Ghana*** [2013-14] 2 SCGLR 1081. In ***Alex Onumah Coleman vrs. Newmont Ghana*** (CIVIL APPEAL NO: J4/67/2019), the Supreme Court held that: *"It is trite that where the trustworthiness of the employee is in doubt as a result of suspicion, the employer will find it unsafe to keep the employee in his establishment."*

[74] This aspect has been extensively discussed infra. In short it would appear that both the constitution, 1992, the Labour Act and a ship load of binding judicial decisions have overwhelmingly rendered per incuriam the pronouncements under reference made in cases such as ***Bani vrs. Maersk Ghana Limited*** and the others cited above.

[75] My Lords, it is sometimes said that all courts below the Supreme Court are bound by the decisions of the Supreme Court. What that statement fails to highlight is the emphasis placed by the Constitution 1992 on the key phrase: **"...on questions of law"**. See Article 129(3). In my understanding any decision of a court however exalted which does not conform to the mandatory terms of a statute does not compel obeisance of courts below it. On this the indelible words of Francois JA (as he then was) in *Edusei v Diners Club Suisse S.A.* [1982-83] 809-806 reverberate thus:

***"In my view, where there are competing calls on a court, as to which authority to comply with, obeisance is due to statute rather than the decision of a higher court however exalted."***

[76] The above declaration has endured up to the present time. Indeed a number of judicial decisions have mimicked its footprint. For instance,

in ***Republic vrs. High Court (Fast Track Division) Accra; Ex Parte National Lottery Authority (Ghana Lotto Operators Association & Ors Interested Parties)*** [2009] SCGLR 390 at page 397 of the Report, Atuguba, JSC stated that:

*"It is **communis opinio** among lawyers that the courts are servants of the legislature. Consequently any act of a court that is contrary to a statute such as Act 7; 22, & 58(1) – (3) is, unless expressly or impliedly provided, nullity."*

[77] Professor Date-Bah JSC was even more direct at page 405 of the Report in the same case:

*"The Judicial Oath enjoins judges to uphold the law, rather than condoning breaches of Acts of Parliament by their orders. The end of the judicial oath set out in the Second Schedule of the 1992 Constitution is as follows; 'I will at all times uphold, preserve, protect and defend the Constitution and laws of the Republic of Ghana.' This oath is surely inconsistent with any judicial order that permits the infringement of an Act of Parliament."*

[78] We are therefore in agreement with Pwamang JSC when he stated with absolute conviction in his minority opinion in ***AKPASS vrs. GCB*** supra which we hereby adopt as our own with approval thus:

*"On account of the provisions of Act 651 referred to by Ansah, JSC and the analysis I made above, my clear thinking is that, the Ghanaian cases that held that the employer has a right to terminate the employment of a worker for no reason and that there can be no specific performance of a contract of employment are no longer good law. The cases include ***Kobea vrs. Tema Oil Refinery (supra)***, ***Lt. Col. Ashun vrs. Accra Brewery Ltd.*** [2009] SCGLR 81 and ***Aryee vrs. State Construction Corporation(supra)***."*

**[79]** What then are the basic facts presented by the plaintiff before the trial court on the basis of which plaintiff commenced and maintained the action before that court and up to this court? They include:

- (i) That she was queried by the Director of Finance instead of the Supervisor (Manager) as stipulated by the Conditions of Service (CoS) and pleaded as in paragraphs 5 and 6 of the Statement of Claim.
- (ii) That she was not queried on the serious charge of fraud and dishonesty though same formed the basis for her dismissal and subsequent mitigation of same to termination. See paragraph 8 of plaintiff's amended witness statement.
- (iii) Plaintiff further stated that per her conditions of service, a query should have a certain format including that the defendant's Human Resource Manager ought to have been copied. Also the Senior staff association was also not copied.

**[80]** She reiterates that the query letter did not contain any charge to the effect that she had engaged in act or conduct which amounted to an intolerable offence and that she only got to know of it in the termination letter. The foregoing are supported by answers given by the plaintiff under cross examination at pages 267 and 269 of the RoA.

*"Q. The petition you sent to the Defendant after the termination letter was served on you, you received a response to it, is that correct.*

*A. My Lord I received a response from the Defendant Company and it is through that they explained to me that I was sacked based on extension of special salary advance deductions and not applying for multiple salary advances. I was never asked to explain myself or given extension of multiple salary advance deduction.*

*Q. Look at paragraph 4 of the termination, Exhibit 'F' does it not explain to you what the committee found in respect of your conduct in the extension of multiple salary advance deductions as you have just said.*

***A. My Lord I have never been queried and have never been asked to explain extension of multiple salary advance so I don't know how the committee came about this finding.***

**[81]** Plaintiff's case which was further articulated through her lawyer when the latter was cross-examining defendant's witness was that the defendant by mitigating the punishment of dismissal to termination has breached the company's Senior Staff Association Conditions of Service. See page 274 of the ROA.

**[82]** On the whole Plaintiff's case is that relevant provisions of the Senior Staff Association Conditions of Service which the trial court found to be applicable to the plaintiff were breached in relation to the plaintiff's (Exhibits 'D' and '6') tendered in evidence by both plaintiff and defendant respectively. Exhibit 'D' and '6' is the said Conditions of service and for Senior Staff tendered in evidence by both the Plaintiff and the Defendant.

**[83]** With these basic facts on the basis of which plaintiff claims that her dismissal was wrongful (unfair) on whom does the burden of proof lie? As established above, the burden of proving that the termination of a worker's employment is fair lies squarely on the company (employer), in this case, the defendant company.

**[84]** My Lords before we embark on answering the above question we deem it necessary to show the procedure adopted by the trial court in coming to its decision against the plaintiff herein as narrated below. By way of reminder the trial court sought to answer a question completely different from that which we have asked above. Which is: whether or not plaintiff discharged the burden of proof imposed on her by law? By way of a brief remark in passing this question does not appear to be appropriate in view of section 64 of Act 651. To this we shall return.

**[85]** The trial court copiously referred to relevant portions of the Conditions of Service to aid it come to a final decision on the case before it as follows: Article 11:03 established the Disciplinary Authority of the defendant. It states:

*"The Disciplinary Authority shall be the Chief Executive but he may delegate his powers in respect of certain categories of disciplinary action."*

Article 11:04 provides for the Disciplinary Procedure and it provides:

*"The Company as part of the disciplinary procedure reserves the right to conduct investigations or inquiry into any matter that, may constitute an offence within the meaning of this Agreement and any Employee facing disciplinary action shall be given a fair hearing."*

- i. The disciplinary procedure may include internal and external investigations, audit exercise and the establishment of a Committee of Inquiry
- ii. The Disciplinary Authority shall take into consideration any representations which the Employee may wish to make during investigations, including the calling of witnesses which may be relevant to the investigations or inquiry
- iii. If the Disciplinary Authority is satisfied that the Employee has breached the terms and conditions of his employment the Employee shall be informed in writing to that effect and the penalty which has been imposed.
- iv. When the Disciplinary Authority is satisfied that the Employee has not breached the terms and conditions of his employment he may be allowed to resume normal duties."

The trial court again identified that there was another Disciplinary Procedure on page 91 following in both Exhibits 'D' and '6' and it also states as follows:

*"Where a supervisor or any authorized person is of the view or has reason to suspect that an Employee has committed an act in violation of the terms of his employment, the supervisor shall adopt the following disciplinary procedure:*

***A. Verbal Warning. ....***

Employee shall be asked by his supervisor in the presence of a Senior Staff Association (SSA) Branch Executive member to explain his conduct verbally;

1. If the supervisor decides that the Employee has exculpated himself no further action will be taken
2. If the supervisor decides that the Employee has not exculpated himself, he shall warn him verbally. He shall decide to prepare in duplicate, a filing memo on the verdict, which shall be signed by all persons present. One copy shall be forwarded to the Head of Department and the second copy shall be retained at the local level.

### ***B. All Other Penalties***

- (i) The supervisor shall issue a query in writing to the Employee requesting him to explain his conduct
- (ii) The date and time by which the Employee shall make an explanation shall be 3-7 days from the date on which the Employee receives the letter. On receipt of the explanation, the supervisor shall forward the correspondence together with his recommendations to Senior Staff Association for their records
- (iii) If it is an offence for which a written warning may be issued the case shall be dealt with by the Senior Staff Association as follows:
  3. If the supervisor considers that the Employee has exculpated himself he shall so inform the Employee in writing and no other action is required
  4. If the supervisor considers that the Employee has not exculpated himself he shall issue him with a written warning and forward copies of the correspondence together with a copy of the written warning to his Head of Department. Copies of the written warning shall be forwarded to the Director of Human Resource & Service and the Senior Staff Association.

(iv) If it is an offence for which a penalty other than a written warning may be issued, the supervisor shall if necessary further investigate the incident and forward all the correspondence together with its recommendations in duplicate to the Head of Department.

(v) If the Head of Department decides that the Employee has exculpated himself or has no case to answer he shall so inform the Employee and no other action will be required.

(vi) If the Head of Department decides that the Employee has not exculpated himself he may carry out further investigations into the case and upon satisfying himself on the guilt of the Employee decide on the appropriate penalty to be inflicted and shall make a summary of the case together with the penalty decided upon and forward these to the Director Human Resource and Services who will then inform the Employee concerned of the decision taken in the matter."

**[86]** After a review of the relevant provisions of the Conditions of service the trial court rejected the plaintiff's argument that the Chief Executive Officer (CEO) and by extension the company had no power to commute the punishment of dismissal to termination. This is what the court said directly:

*"The penalties are as described below. The disciplinary authority will in all cases exercise his discretion in the award of penalties... This therefore means that in as much as various penalties had been ascribed for various offences the Disciplinary Authority had the discretion to change the offence and this is what he did in respect of the Plaintiffs case so it was within his rights and was covered by the Senior Staff Association Conditions of Service.*

**[87]** As already stated, the trial court held that the burden of proof and persuasion lied on the plaintiff. In support of this declaration, the court relied on sections 10, 11, 14 of the Evidence Act (Act 323) It is our opinion however that the trial court erred when it imposed on the plaintiff the initial burden of proving whether or not the termination of plaintiff's employment was wrongful or unfair

when indeed the Labour Act (Act 651) section 64 has clearly imposed the initial burden of proof that the termination was fair on the defendant company.

**[88]** No wonder the trial court endeavoured to find another means by which the termination of plaintiff's employment can be described as fair. This, the court did, by stating that be that as it may, the defendant by giving plaintiff a letter of termination of plaintiff's employment to take effect more than one month from the date of issuance of the said letter renders the termination lawful under section 17 of the Labour Act. It is on the strength of this approach that the trial court held that plaintiff had failed to discharge the burden of proof imposed on her.

**[89]** My Lords, for us, the imperative question is this; *whether or not the defendant herein succeeded in discharging the statutorily imposed burden aforesaid?* In other words, did the defendant by its pleadings, evidence before the court, its cross-examination of plaintiff and her witness and any other means by which defendant is permitted to put across its case to the court establish that the termination of the plaintiff's employment was fair?

**[90]** The main focus must be on the processes and procedures that took place prior to the proceedings of the investigative disciplinary committee. Plaintiff has stated that she received a letter requiring her to explain how she was able to obtain "***special salary advance***" for 3 consecutive times (**Exh. C**) and that the same amounted to a "flagrant ***contradiction of the rules and why disciplinary action should not be taken against... [her] in the this regard***". Plaintiff was given 9 days to ensure that the Director of Finance who signed "Exhibit C" would receive plaintiff's response.

**[91]** It bears emphasis that the plaintiff has stated that she was never queried concerning any charge that she had committed any offence known or recognized under (Exh. D) i.e. the Senior Staff Association Conditions of Service.

[92] My Lords a careful reading of (Exh. C) would leave no doubt in the mind of any reader that plaintiff was not queried on any specific charge considered as an intolerable offence. Indeed, the trial court found at page 19 of the judgment and specifically page 368 of the ROA that:

***"As stated in Exhibit 'H' her appoint was not terminated for taking the Special Salary Advance which she told the court she had paid in full, but it was for the various unauthorized extensions of the loan repayment period which was fraudulent and dishonest."***

[93] Thus, failure of the defendant to give plaintiff prior notice of a charge as serious as fraud and dishonesty to enable plaintiff provide befitting response to such a serious charge violated plaintiff's inalienable right to fair hearing and therefore the procedure adopted by the defendant culminating in the termination of the employment of the plaintiff was unfair.

[94] We are emboldened to come to the above declaration by the dictum of Benin JSC in ***REPUBLIC vrs. HIGH COURT, ACCRA (INDUSTRIAL AND LABOUR DIVISION COURT 2); EX PARTE PETER SANGBER-DERY [2017-2018] 1 SCLRG 552***. In this case the Supreme Court noted that the prohibited grounds for terminating an employment under section 63 of Act 651 are simply restatements of the human rights provisions under the Constitution, 1992. Benin JSC noted at page 569 as follows:

***"Upon a close look at section 63 of the Act, it will be noticed that the grounds stated therein as grounds of unfair termination of employment are largely taken from the Human Rights provisions of the 1992 Constitution particularly articles 24, 26 and 29 and it appears the legislature was merely seeking to give effect to those provisions."***

*Being a human rights issue under our Constitution, the right to a fair trial must be adhered to at all costs for the development of our democracy. Every step taken in the adjudication process should be manifestly and undoubtedly be seen*

to be fair. Thus, Article 19(13) of the Constitution dealing with the duties of adjudicating authorities provides as follows:

***"An adjudicating authority for the determination of the existence or extent of a civil right or obligation shall, subject to the provisions of this Constitution be established by law and shall be independent and impartial and where proceedings for determination are instituted by a person before such an adjudicating authority, the case shall be given an adjudicating fair hearing within a reasonable time".***

[95] On this we wish to adopt as our own, the enduring words of the majority of the Supreme Court in the **GEORGE AKPASS** case supra in which their Lordships stated that there is always the need to give effect to the aged-old principle of fair trial in labour matters, adjudication of labour disputes involving allegations of misconduct of workplace staff. In such a case, disciplinary committee proceedings "should as nearly as possibly follow adjudication practices which promote procedural fairness such as natural justice. There must also be pre-hearing protocols which eliminate elements of surprises. Every effort must be made to avoid 'ambush' or surprises likely to work against the interest of the staff under investigations."

[96] Their Lordships further illustrated the point with the changes that have been effected in the civil litigation proceedings which have substantially eliminated elements of surprises have been with the passage of C.I. 87 which has introduced the exchanges of witness statements and exhibits at Case Management Conference before trial. The Supreme Court further cushioned the advocacy for fair trial in labour disputes with the changes that have been introduced into criminal adjudication as well. As is well known, now accused persons "have true sense of justice after the interpretation of Article 19 by this court in the celebrated case of **REPUBLIC vrs. BAFFOE-BONNIE & ORS** [2017-2020] 1 SCGLR 327. ***Surprises, therefore in administrative justice should be a matter of concern to the court.***"

[97] The fairness expected by the framers of the Constitution has been further given a boost in Article 23 where administrative officials and tribunals of administrative bodies have been charged to act fairly. According to Article 23:

***"Administrative bodies and administrative officials shall act fairly and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal."***

[98] Accordingly, Administrative bodies, exercising discretionary power to determine the fate of workers facing disciplinary hearings are required to make conscious effort to guard against "illegality, irrationality, and procedural impropriety" and to act with fairness and reasonableness. See the groundbreaking Judgment of S.K.A. Asiedu J(as he then was) in ***Anthony Among v Attorney-General & THE HEAD OF CIVIL SERVICE***; SUIT NO. AP 95/2009; Dated 2nd December 2009.

[99] My Lords, the foregoing analysis of the issue of whether or not termination of Plaintiff's employment was unfair which we find to be the ultimate issue has led us to the conclusion that the termination of plaintiff's employment with the defendant was unfair is therefore substantially dispositive of the case.

[100] In our view the lamentations of the plaintiff concerning the other basic facts do not deserve expenditure of this court's precious time and energy. We agree with the trial court when it held that the failure of the defendant to forward copies of the decision of the disciplinary committee to the Senior Staff Association was not fatal. See the majority decision in ***George AKPASS vs. GHANA COMMERCIAL BANK (supra)***.

[101] We are also not inclined to disturb the finding of the trial court to the effect that the case of the Plaintiff that the procedure laid down in the conditions of Service as represented above was not followed in that, *inter alia*, Plaintiff did not receive a query *per se* but a mere letter which required her response was

not tenable. This is because, at all material times, plaintiff knew that the said letter was in essence a query requiring her to respond to the matter stated therein.

**[102]** On the case of the plaintiff that per the Conditions of Service it was her supervisor who was to issue the query but in her case it was the Director of Finance who issued the query and not her Supervisor is not only inconsequential but that same was successfully traversed by the trial court including the fact that there is evidence on record that the said supervisor had himself been queried regarding the very subject for which plaintiff was facing disciplinary investigation.

**[103]** It is on record that both her supervisor and she were queried. It therefore stands to reason why it was the Director of Finance who issued the query to both the Plaintiff and her supervisor. The trial court found that: "In as much as P.W.1 tried to deny during cross examination that his letter was not a query all his answers went to indicate that he knew it was a query."

**[104]** The trial court was faultless when it held that it was clear from the answers that plaintiff gave that she knew that Exhibit "C" was a query. "She even used the word 'query' in her statement of claim but tried to deny same during cross examination.... She even stated that if she is found culpable she should be seen as a first time offender. Since both Plaintiff and P.W.1 her supervisor were being queried a person higher than her supervisor was the one to issue the query so that cannot be said to be a breach of the Conditions of Service. So in effect P.W.1 was under the supervision of the Director of Finance and the Plaintiff was under the supervision of the P.W.1 and therefore the rightful person was someone above the two officers."

**[105]** My Lords plaintiff's conduct in relation to the foregoing is akin to that which led the court in the *The Zamora (No 2)* [1921] 1 AC 801 @812 to tutor on the attitude of a person who knows of the existence of a matter but to avoid what she perceives to be its presumptive effect feigns ignorance of same. Let us witness how the English court formulated the concept:

*"There are two senses in which a man is said not to know something because he does not want to know it. A thing may be troublesome to learn, and the knowledge of it, when acquired, may be uninteresting or distasteful. To refuse to know any more about the subject or anything at all is then a willful but a real ignorance. On the other hand, a man is said not to know because he does not want to know, where the substance of the thing is borne in upon his mind with a conviction that full details or precise proofs may be dangerous, because they may embarrass his denials or compromise his protests. In such a case he flatters himself that where ignorance is safe, 'tis folly to be wise, but there he is wrong, for he has been put upon notice and his further ignorance, even though actual and complete, is a mere affectation and disguise."*

**[106]** We fully agree with the trial court that the plaintiff herein had full knowledge of the relevant matters outlined above and therefore cannot pretend not to be aware of same.

**[107]** From the foregoing we have no doubt in our minds that the defendant has failed rather woefully to discharge the burden imposed on his by law to prove that the termination of the employment of the plaintiff is fair. In other words the dismissal of the plaintiff, albeit mitigated to termination was unfair, as, inter alia plaintiff was not given prior notice of the serious charge of fraud and dishonesty which however formed the basis on which she was dismissed or her appointment terminated.

## **RELIEF FOR REINSTATEMENT**

**[108]** Both parties have expended enormous energy in their bid to urge on the court that the defendant is a public institution on one hand and that it is not on the other hand. We gather that the parties did so because they were labouring under the erroneous belief that the old law on which type of employer can be compelled to reemploy or reinstate a worker whose employment the employer

had earlier terminated was still in operation at the time of prosecution of the cases before the trial court.

[109] Admittedly, My Lords the law on whether or not a worker who has been dismissed or whose employment has been terminated on stated grounds should be reinstated after the termination had been found by a court of competent jurisdiction or other tribunal established by law with a mandate to adjudicate labour matters had a checkered history prior to the enactment of Act 651. The following cases were cited by Benin JSC in ***CASTRO DANIEL YAO AHIAMO vrs. THE ATTORNEY-GENERAL & 2 ORS.*** CIVIL APPEAL NO. J4/38/2016 as exemplifying the fact that the courts have not been *ad idem* on the circumstances under which the court would order reinstatement of a worker whose employment has been terminated as listed below.

[110] ***SALLAH vrs. ATTORNEY-GENERAL***, Supreme Court, 20 April 1970, unreported, digested in (1970) CC 55; Quayson v. Attorney-General (1981) GLR 295, C.A.; Kwapong and Another v. Ghana Cocoa Marketing Board and Others etc (Consolidated) (1984-86) 1 GLR 74, which seem to decide that once the dismissal was wrongful in terms of a statute, including the Constitution, reinstatement should be ordered. It is widely noted that the decision to reinstate the affected parties in the Sallah case led Professor Kofi Abrefa Busia, the then Prime Minister to proclaim on air that no court could compel the then Government to employ anybody.

[111] On the other hand, there are cases such as ***ATOONGO vrs. BOLGATANGA URBAN COUNCIL***, Court of Appeal, 23 February 1970, unreported; digested in (1970) CC 39; Bank of Ghana v. Nyarko (1973) 2 GLR 265, C.A.; Ghana Cocoa Marketing Board v. Agbettah and Others (1984-86) 1 GLR 122, where reinstatement was not ordered for a variety of reasons, even though in a case like GCMB v. Agbettah, the dismissal was in violation of a constitutional provision.

[112] The law in force prior to the enactment of Act 651 as has been underscored by Osei-Hwere JSC in **NARTEY-TOKOLI & ORS vs. VOLTA ALUMINUM CO LTD** supra is that no employer could be compelled to employ an employee when it did not want to. The only exception had been where worker was a public office holder. Their Lordships stressed the point thus:

*"The only situation in which the common law guarantees procedural rights to working people is where it can be established that there is an **element of public employment or service, or some degree of statutory regulation, or that the employment is something in the character of an office**: see *Mallock v Aberdeen Corporation* [1971] 2 All ER 1278, HL. The plaintiffs held no public offices which gave them basic rights to the security of their jobs. The collective agreement which permitted the employer's right to terminate an employee's appointment with notice did not assure the plaintiffs their basic rights to the security of their jobs."*

[113] Admittedly, there have also been some cases post Act 651 which continue to apply the old common law position despite the enactment of Act 651, Section 64 of which permits a court to make an order of reinstatement in appropriate cases. One of such cases is **BANI vs. MAERSK GHANA LTD** [2011] 2 SCGLR 796 at 807 to 808 of the Report. In this case the venerable Date-Bah JSC had this to say:

*"These facts call for a restatement of the Ghanaian common law on the termination of contracts of employment and the extent to which it has been modified by the statutory provisions in the Labour Act 2003 (Act 651). It remains the common law that the remedy available to an employee who has been wrongfully dismissed or terminated is an action for damages. **An employee cannot be awarded an order for his reinstatement into a job from which he has been removed unlawfully, unless there is a public law element which requires otherwise.** See *Lt. Col. Ashun v Accra Brewery Ltd.* [2009] SCGLR 81. **A reinstatement would be equivalent to specific performance of a contract of employment, which is not permissible.** It is settled law that contracts of employment, in general, may not be specifically enforced at the suit of either party."*

*There is a sound policy underlay to this rule. It has to do with the courts restraining themselves from interfering with personal liberty. The essence of the policy is sometimes expressed in the saying that contracts of employment are not contracts of servitude. It would not be wise to compel an employee to work for an employer he does not want to work for, nor conversely to compel an employer to employ an employee it does not want to. There is a large element of personal relationship in many employment contracts which would make them unworkable if the parties were compelled to work together. **However, increasingly, modern legislation has been intervening to give employees a right to reinstatement. This is in recognition of the fact that the modern relationship of an employer to an employee may have less of the personal element of the master and servant relationship in response to which the equitable principle developed, that contracts of employment should not be specifically enforced.***

[114] In the *Nartey-Tokoli* case however the the Supreme Court speaking through Osei-Hwere JSC acknowledged that there are instances where statutes such as "***the Industrial Relations Act, 1965 (Act 299) accords all workmen that come within the ambit of the legislation, procedural rights or safeguards which are, without doubt, a considerable advance towards building for employees a more secure form of job rights.***"

[115] What needs to be highlighted is that even though their Lordships found that the termination of the employment of the appellants was in breach of provisions of the **Industrial Relations Act, 1965 (Act 229)** and consequently void they set aside the order of the trial court for reinstatement citing a number of reasons but rather made orders in the alternative as captured in the headnote 2 as follows:

*"2) The measure of damages for wrongful dismissal from employment was not to be confined to only loss of wages or salary but in addition the employee was to receive his entitlements under the contract of employment. The plaintiffs were therefore entitled to receive their*

*salaries from the dates they ceased to receive them to the dates of their respective de facto termination, including an additional twelve months' salary (as awarded by the High Court in the exercise of its discretion) as damages for wrongful dismissal as at the respective dates of the de facto termination of their employment. As the termination of their employment was held to be void and of no legal effect they remained employees de jure and would therefore, be entitled to earned leave allowances, bonus, long service awards, including food packages and all other benefits said to be enjoyed on a so-called gentleman agreement basis; all of which should be converted into cash if feasible as at the respective dates of the plaintiffs' de facto dismissal."*

**[116]** My Lords undoubtedly one of the cases on the law of reinstatement of an employee which can properly be classified as groundbreaking is ***CASTRO DANIEL YAO AHIAMO vs. THE ATTORNEY-GENERAL & 2 ORS. CIVIL APPEAL NO. J4/38/2016.***

**[117]** In that case, both parties had presented rival versions on the applicable law to the only issue raised in the appeal which was whether or not the Supreme Court should affirm the appeal against the consequential orders made by the said court whereby it refused to order the re-instatement of the plaintiff as well as his claim for arrears of salary, even after it had nullified his dismissal from the Police Service.

## **CONCLUSION**

**[118]** On the facts of the instant case defendant is praying for the following reliefs:

- a. "A declaration that the termination of Plaintiff's appointment by the Defendant is wrongful*
- b. An order to reinstate the Plaintiff to the current position and rank of her mates***

- c. *Payment of all arrears of salary as well as other benefits due the Plaintiff*
- d. *Damages for wrongful termination of Plaintiff's appointment by the Defendant and*
- e. *Cost including legal fees."*

**[119]** This court has already found that the termination of plaintiff's employment was unfair as same was inter alia contrary to relevant provisions of the Labour Act (Act 651). Relief (a) is therefore granted.

**[120]** On relief (b) by which plaintiff is seeking an order for re-instatement of plaintiff in the defendant's employment we wish to reiterate the clear position of the law which is to the effect that this court has jurisdiction to grant a relief for reinstatement of a worker whose employment has been unfairly terminated. Section 64 of (Act 651) has now put the matter beyond any shadow of doubt, which we hereby quote in full *ex abundante cautela*. It reads

*"Section 64(2) If on investigation of the complaint the Commission finds that the termination of the employment is unfair, it may*

***(a) order the employer to re-instate the worker from the date of the termination of employment;***

***(b) order the employer to re-employ the worker, in the work for which the worker was employed before the termination or in any other reasonably suitable work on the same terms and conditions enjoyed by the worker before the termination; or***

***(c) order the employer to pay compensation to the worker.***

**[121]** It is our opinion that considering all the circumstances of this case this court is unable to grant plaintiff's relief (b) praying the court to grant her an order for reinstatement in the defendant company. This is because we find it unrealistic to make an order to reinstate the plaintiff in her former job as same

would have been filled by other staff over the past 7 years. As Francois JSC puts it in the *Nartey-Tokole* case ***"Fairness and the need to avoid absurdity dictate a middle cause to ensure a just solatium in keeping in known circumstances"***.

[122] The Plaintiff has also sought a relief (ie.relief (c)) for ***"Payment of arrears of salary as well as other benefits due the plaintiff"***. My Lords, there is incontrovertible evidence on record that upon the defendant mitigating the dismissal of plaintiff into termination, plaintiff was paid all her entitlements. The said termination took effect from 4<sup>th</sup> April 2019. The instant action was commenced on 16<sup>th</sup> March 2021 almost 2 years after the termination took effect.

[123] From the date the action commenced from the trial court to today 29<sup>th</sup> of January 2026 it has been almost 7 years since termination of plaintiff's employment took effect. The authorities are to the effect that in a situation such as this, plaintiff is required to mitigate her losses by finding a suitable job that will pay her reasonable remuneration for the lost of her job if the plaintiff has not done so and this court would not be in a position to assist her fully.

[124] My Lords when defendant sought to elicit information from plaintiff as to whether she was into any trade or business since the termination of her employment, her answers were not helpful to the court as plaintiff appeared to be evasive. Let us observe how this happened during cross examination by defendant's counsel at page 268 of the ROA.

**Q.** *I understand you are doing business now.*

**A.** *My Lord I have not stated anywhere in my witness statement that I am doing business.*

**Q.** *You are not trading as we speak.*

**A.** *My Lord I have not disclosed in any of the papers or documents I have submitted that I am trading.*

**Q.** *But you are in fact trading is that not so.*

**A.** *My Lord answer is still the same that I have not stated in any of my documents submitted before this Court that I am trading.*

*Q. I put it to you that you are into active trading as at now.*

*A. My Lord still maintain my stand that I have not stated in any of the court documents that I am into trading.”*

**[125]** This court is however in a position to grant plaintiff an order for payment of arrears of salary and other benefits from the date of the unfair termination, i.e. 4<sup>th</sup> April 2019 which plaintiff would have received if she was in employment of the defendant up to the date of this judgment, at the position she last held until her termination.

**[126]** On relief (d) which is damages for wrongful termination of plaintiff's appointment by the defendant, we have assessed plaintiff's case in its entirety and the fact that we have determined that the dismissal was unfair.

**[127]** Relief (e) being sought by the plaintiff is cost including legal fees and the same is hereby granted.

**[128]** Save the variations effected on the plaintiffs' reliefs above, the appeal succeeds. Plaintiff is entitled to reliefs (a) (c), (d) and (e) as varied above. For avoidance of doubt relief (b) is substituted for payment of compensation for unfair termination as we are permitted to do under section 64(2)(c).

## **SUMMARY OF ORDERS OF THE COURT**

1. The Termination was unfair.
2. We grant an order for payment of Salary Arrears for two years.
3. We award damages for reliefs (b) and (d) for unfair termination in the sum of GHC50,000
4. Appellant is granted reliefs (a), (c), (d) and (e) endorsed on the writ of summons

5. We award cost in the sum of GHC60,000. The award of cost is by the agreement of both lawyers at the bar.

Consequently, the appeal succeeds, and the judgment of the trial court dated 22<sup>nd</sup> September 2023 is hereby set aside.

**SGD.**

**EIRC KYEI BAFFOUR  
(JUSTICE OF APPEAL)**

**SGD.**

**BARIMA KODIE YAW OPPONG  
(JUSTICE OF APPEAL)**

**SGD.**

**FRANKLINA GESILA ADANU (MRS)  
(JUSTICE OF APPEAL)**

**COUNSEL:**

**Augustines Obour Esq  
With Claudiya Coma For**

**– PLAINTIFF/APPELLANT**

**Albert Dapaah-Yeboah  
With Dorothy Bonsu For**

**– DEFENDANT/RESPONDENT**