

IN THE HIGH COURT OF SIERRA LEONE  
INDUSTRIAL AND SOCIAL SECURITY DIVISION  
TRADE DISPUTE

BETWEEN:

FRANK BASSIE

-

PLAINTIFF

AND

SUNBIRD BIOENERGY (SL) LTD.

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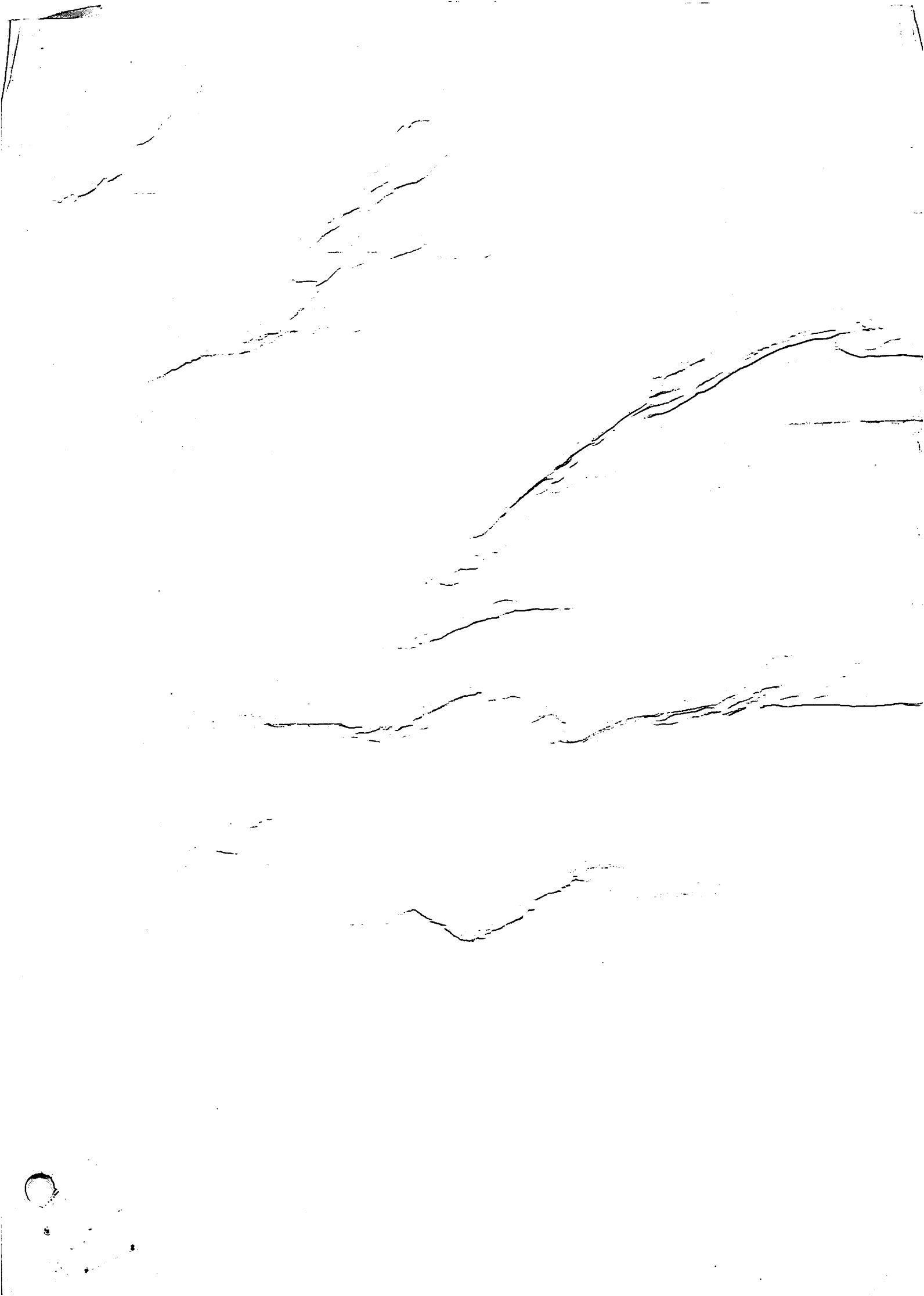
DEFENDANT

**JUDGEMENT DELIVERED THE 1<sup>ST</sup> DAY OF JULY, 2020**

1. This matter was referred to this Court (now known as the Industrial and Social Security Court) by a memorandum from the Minister of Labour and Social Security dated 17<sup>th</sup> September, 2018.
2. In the summary of the ~~complaint~~ attached to the memorandum ~~from the MLSS~~, the complainant, herein (Plaintiff), Mr. Frank Bassie was ~~terminated by the~~ Defendant on the ground of financial misappropriation. The matter was referred to the Police and subsequently charged to the High Court in Makeni. He was tried and discharged.
3. On the 16<sup>th</sup> October, 2016, the Plaintiff wrote to the Defendant requesting them to pay him salary for the 35 months he was attending Court since he had been acquitted and discharge.
4. The conciliation meeting held at the MLSS did not yield any favourable result for the Plaintiffs. The Plaintiff claimed 35 months backlog salary, the MLSS recommended 20 months whilst the Defendant insisted on a month's salary in lieu of notice.

**THE PROCEEDINGS**

5. The Plaintiff was initially represented by the late Christopher J. Peacock Esq. who had filed and served all relevant documents regarding this matter on behalf of his client which amounted to a degree of disclosure most Solicitors turn a blind eye to. The Defendant was ably represented by A. B. Bangura Esq.



6. There was a long delay in hearing evidence due to the said passing on of the Learned C. J. Peacock Esq. (May his soul rest in perfect peace).
7. The trial commenced on the 13<sup>th</sup> May, 2019

**PW1 – IDRISSA DUMBUYA**

8. He is the Labour Officer assigned to investigate the matter. He recalled that sometime in 2017, the Northern Regional Office forwarded a complaint to the MLSS from workers including the Plaintiff of the Defendant who had been dismissed by the Defendant on the ground of alleged misappropriation. The Plaintiff who is the only complainant in this action reported to them that the allegation of misappropriation was charged to Court but he was acquitted and discharged for want of prosecution.
9. PW1. Informed the Court that a conciliation meeting was held at the office of the Deputy Minister MLSS on the 29<sup>TH</sup> June, 2018. The Ministry sent a letter to the Defendant, requesting them to pay the backlog salary of twenty (20) months to the Plaintiff. The Defendant argued that the Plaintiff was owed only one month salary in lieu of notice of termination. When no consensus was reached, the MLSS computed the benefits due the Plaintiff and sent same to the Defendant. The said computation was tendered and marked "A".

**PW.1 WAS CROSS EXAMINED BY A.B. BANGURA ESQ.**

10. The PW1 answered on how he computed the entitlements of the Plaintiff as stated in Exhibit "A". He explained that the figures therein were derived from information received at the conciliation meeting. PW.1 agreed that the relationship between the Plaintiff and the Defendant was governed by a written contract. He was however not aware that the Plaintiff had been an employee of the predecessor company of the Defendant.
11. PW.1 answered that the contract of employment between the Plaintiff and the Defendant was on a fixed term basis as he was now made to believe. He disagreed that the computation of the Plaintiff's benefits was not consistent with the contract of employment.



**PW.2 – FRANK BASSIE.**

12. PW.2 is the Plaintiff in this matter. He informed the Court that he was initially employed by the Defendant on a fixed term contract on 1<sup>st</sup> January, 2014 which contract expired on 31<sup>st</sup> December, 2012. He subsequently signed another two (2) year contract on 3<sup>rd</sup> June, 2013 which commenced on 1<sup>st</sup> January, 2013. The latest contract was tendered as Exhibit B<sup>1-6</sup>.
13. On the 3<sup>rd</sup> June, 2013, he was promoted with an increase in salary from Le2,439,000/00 to Le4,000,000/00. The letter of promotion was tendered as Exhibit "C<sup>1-4</sup>".
14. On the 4<sup>th</sup> July, 2013, 30<sup>th</sup> September, 2013 and 1<sup>st</sup> November, 2013, he was accused of conspiracy etc. and the matter charged to Court. He was acquitted and discharged of all the offences. The order of Court in that respect was tendered and marked Exhibit "D".
15. PW.2 informed the Defendant of his acquittal and he replied with Exhibit "E". PW.2 testified that his benefits have still not been paid and is claiming same for the period November, 2013 to 12<sup>th</sup> June, 2019.

**CROSS EXAMINATION OF PW2.**

16. The PW.2 testified that his contract was governed by the Laws of Sierra Leone and would expire on the 31<sup>st</sup> December, 2014. It was a fixed contract and his claims do not go beyond that period.
17. PW.2 testified that when the matter commenced, he was not queried and this was done only after his acquittal by the Court when his services were terminated. He had served 10 months of his contract when he was accused. There was no internal investigation before his termination and he was not given a month's notice.

**DW1 – FESTUS DAVIES**

18. DW. 1 is an employee of the Defendant and informed the Court that the Plaintiff was their employee on a fixed term contract for the period 1<sup>st</sup> January, 2011 to 31<sup>st</sup> December, 2012. He tendered the Plaintiff's contract of employment as Exhibit "F<sup>1-7</sup>". On the expiration of that contract the Plaintiff was given another contract as Resettlement and Compensation Officer for a period of 24 months.

19. DW1 recognised a contract between the Plaintiff and the Defendant dated 25<sup>th</sup> April, 2013. The contract was to have a retroactive effect from 1<sup>st</sup> January, 2013.
20. DW.1 testified that in November, 2013, an asset compensation fraud involving the Plaintiff was discovered. This involved an overstatement of compensation period to the community land owners for economic crops. During the investigation, the Plaintiff stopped coming to work as a result of which he was considered to have abandoned his job.
21. The contract of employment was tenders as exhibit "G<sup>1-6</sup>" (new contract). The Plaintiff served for 11 months under the new contract. The Plaintiff's contract was terminated because he abandoned his job.
22. DW.1 continued that the Police put out a warrant of arrest for the Plaintiff which may have caused him to appear at the Police Station. The matter was subsequently charged to Court. DW.1 explained that the Defendant did not pursue the matter in the High Court when it was committed because it was in the middle of a restructuring. The staff representing the Defendant in Court were no longer with them.
23. After the discharge of the Plaintiff, his Solicitor wrote to the company requesting payment of backlog salary. This letter was tendered as "H<sup>1and 2</sup>". The Defendant did not make payment as requested and the matter was reported to the MLSS.
24. The MLSS invited the Defendant to a conciliation meeting which its representatives attended. The MLSS requested the defendant to make payment of 20 months backlog of salary to the Plaintiff by letter dated 16<sup>th</sup> July, 2018. This letter was tendered and marked "K<sup>1and 2</sup>". The Defendant did not comply with the Ministry's position but agreed to pay a month's salary in lieu of notice.
25. DW.1 concluded that the Plaintiff did not participate in the internal investigations and those of his colleagues who did were, found liable.

#### **CROSS EXAMINATION OF DW.1**

26. DW.1 insisted that the Plaintiff did not attend the internal investigations and could not recall that the investigation took place on the 1<sup>st</sup> July, 2013 and 30<sup>th</sup>

September, 2013 respectively. DW.1 agreed that that a complaint was made at the Police Station against the Plaintiff together with others. One of those reported, Hassan Sapor Kamara was still working for the company.

27. DW1 denied knowing one Peter Y. Conteh and could therefore not say he worked for the company. He clarified that the Plaintiff was only discharged and not acquitted.

28. DW.1 agreed that there was no letter inviting the Plaintiff to the investigation. He denied that the Plaintiff was still an employee of the Defendant.

## **ADDRESS**

### **PLAINTIFF**

29. The Plaintiff who appeared in person after the demise of his Solicitor/Counsel submitted a written statement dated 16<sup>th</sup> July, 2019.

30. The Plaintiff wrote that he was acquitted and discharged by the High Court sitting at Makeni of all the charges by an order dated 24<sup>th</sup> August, 2016. He argued that he was thereafter entitled to be paid for a period of 69 months effective from November, 2013 to July, 2019 and to also be reinstated. This was because his contract had never been terminated as at 3<sup>rd</sup> July, 2019. The Plaintiff also argued that since the 9<sup>th</sup> Accused on the indictment was still working for the company, he was also entitled to resume work.

31. The Plaintiff concluded by stating that he did not contravene Sections 14 to 21 of his Employment contract dated 25<sup>th</sup> April, 2013. The Defendant must additionally pay his net Salary, NASSIT Contributions and cumulative income tax.

### **THE DEFENDANT**

32. In his written submission, A. B. Bangura Esq. Counsel for the Defendant after narrating the facts of the case first submitted that the contract between his client and the Plaintiff was a fixed term contract with a twenty-four month term. It took effect from the 1<sup>st</sup> January, 2013. At law, he submitted, a fixed-term contract has a definite date of commencement and a definite expiry date and that a provision for giving notice to end the contract during its term does not prevent it from being a fixed term contract. By operation of law, the

Plaintiff's contract would have naturally and automatically come to an end upon the lapse of 24 months. Thus the Plaintiff's claim for backlog of salaries for 35 months is untenable.

33. Mr. Bangura further submitted that the contract being a fixed contract, it also has an early exit opportunity exercisable by either party under clause 3 of the contract dated 25<sup>th</sup> April, 2013. He submitted that at law, the interpretation of clause 3 was that it gives the Defendant an option to pay money in lieu of notice. In the event that the Defendant fails to make the payment after terminating the contract without notice (such as what transpired in this matter), the Plaintiff can sue for the money as a debt – N. M. SELWYN, LAW OF EMPLOYMENT, 14<sup>th</sup> Edition, page 374 and not to claim for 35 Months' Salary backlog.

34. Mr. Bangura concluded that the termination of the services of the Plaintiff arose from his performance under the contract and his abandonment of the internal investigation and subsequent absenteeism from work and not as result of the criminal charges.

### **ISSUES FOR DETERMINATION**

35. The first issue for determination here is the legal incidence of a fixed term contract. This will assist in arriving at a decision as to whether the Plaintiff was entitled to 35 months backlog of salary.

36. Secondly, whether the termination of the services of the Plaintiff was unlawful.

37. Fixed term employment contracts are designed to cover a specific period of time unlike open-ended standard employment contracts. Fixed term contracts have an end point whether a specific date or the point at which a project has been completed - upon which the employment automatically ceases, unless a new agreement is reached. Notice therefore need not be given at the agreed end point. In this, I agree with Counsel for the Defendant.

38. The contract in this matter was a fixed term contract for a specific period as stated in Exhibit "B<sup>1-6</sup>".

"The contract shall commence on the 1<sup>st</sup> January, 2013 and shall be valid for 24 months or until terminated pursuant to Clause 3 on "Termination" below.



Clause 3 provides that:

"Either party may terminate this contract by giving the other party One (1) months' notice in writing of intention to terminate this contract or on Month's Salary in lieu of notice without cause.

39. "Termination of this contract shall not affect the rights of the parties which would have accrued before the termination. Accordingly, in the event there is termination, all accounts will be reconciled and outstanding salaries will be paid in full".

40. It should be noted that Clause 2 used the disjunctive "or" meaning that the contract was for 24 months or earlier as stipulated in Clause 3. From the nature of the contract between the Plaintiff and the Defendant, I hold that the said contract terminated automatically on 31<sup>st</sup> December, 2014 and was not renewed. Any claim the Plaintiff may have, if any shall not in law extend beyond that date. As the Plaintiff has not provided any evidence of extension of his contract beyond 31<sup>st</sup> December, 2014, any further claim would be illusory. The evidence before this Court is that the Plaintiff worked for 11 months out of the 24 months.

41. The second issue deals with whether the services of the Plaintiff were wrongfully terminated. The Plaintiff argued that since he was discharged by the Courts, the failure of the Defendant to pay his backlog of salary and reinstate him amounts to unlawful. The Defendant on the other hand is arguing that the Plaintiff abandoned his employments when he was invited to an investigation into an allegation of fraud. The colleagues with whom he was accused attended the investigation.

42. What is the law on abandonment of duty? In the case of **MOHAMED FULLAH VS. GENERAL MANAGER, COLUMBIA DAVIES MEMORIAL FUNERAL PALOUR (I.C. No. 1/16 2009)** delivered on the 13<sup>th</sup> March, 2019 I had this to say:

"The principle governing abandonment of duty is that for an abandonment of employment to arise, the employee must have shown a clear intention to no longer be bound by the terms of the contract of employment. If an employee fails, without explanation to attend work, the point at which the employee will be considered to have abandoned his employment will depend on how long the absence extends and the context in which it occurred. The effect of abandonment is that the employee would be deemed to have repudiated his employment contract. In such a situation, the employer may elect to either





accept the repudiation and terminate the contract of employment or affirm the employment contract so that it remains on foot".

43. I went further to say: -

"The election to either terminate or affirm should be clearly communicated to the employee although it can be implied by conduct.

The act of abandonment of the employment does not terminate the employment, the abandonment gives the employer the right to elect to terminate the employee. In these circumstances, the fact of abandonment will usually be the reason which the employer relies on to justify the dismissal"

- **LAZAR V. INGHAM ENTERPRISES**
- **L.VY LTD (2013) FWC 3447**
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In the instant matter, the fact of abandonment relied on by the Defendant is the failure of the Plaintiff to attend the internal investigation hearings and come to work. This to my mind amounts to abandonment of the Plaintiff's duties. However, the time at which the Defendant decided to take action on the said abandonment is crucial. The Plaintiff wrote to the Defendant by letter dated 16<sup>th</sup> September, 2016 titled ACQUITTAL AND DISCHARGED COURT ORDER informing the said Defendant that the High Court had acquitted and discharged him and demanded payment of 35 months backlog salary. The Defendant replied by letter dated 6<sup>th</sup> September, 2016 informing the Plaintiff that an investigation was required to assess the validity of his claim. Another letter was written to the Defendant by the Plaintiff's Solicitor dated 16<sup>th</sup> September, 2016. A final letter was written by the MLSS dated 16<sup>th</sup> July, 2018 demanding the payment of 20 (twenty) months salary amounting to Le.48,580,000/00 to the Plaintiff "...as a way of peaceful resolution to close matter". The Defendant replied to this letter by stating various reasons why the Plaintiff was not entitled to the sum demanded which seems to be a mirror image of their Counsel's address. They insisted that the Plaintiff had been terminated without notice as specified in their employment contract and was therefore entitled to one month's salary in lieu.

44. It is my considered view that had the Plaintiff being made aware of this situation as soon as it became evident in 2013, the termination for abandonment as alleged by DW.1 should have saddled the Defendant with liability for only one month salary. It would be stretching the law too far to uphold a termination formalised in 2018 for an incident that took place five years earlier.

45. It would be proper in the instant case that the Plaintiff received payment for only the unexpired period of his fixed term contract. Attempting to be paid beyond that would amount to unjust enrichment which is exactly what the Plaintiff is purporting to do.

**In the circumstance, I order as follows:**

1. That the Plaintiff recovers from the Defendant the sum of Le31,784,500.00 being backlog of salary for the unexpired period of the contract dated 25<sup>th</sup> April, 2013.
2. Interest thereon at the rate of 5 percent per annum from the 28<sup>th</sup> September, 2018 to date of Judgment.
3. Costs of Le3,000,000.00 to be paid by the Defendant to the Plaintiff.



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**HON. JUSTICE SENGU KOROMA – JSC  
PRESIDENT OF THE INDUSTRIAL AND  
SOCIAL SECURITY DIVISION**