IN THE SUPERIOR COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE, INDUSTRIAL/LABOUR DIVISION I

HELD IN ACCRA ON MONDAY 4TH JULY, 2016

BEFORE HER LADYSHIP JUSTICE GIFTY DEKYEM (MRS)

SUIT NO. INDL/53/13

DR FESTUS NII BOYE BOYE PLAINTIFF

VRS

GHANA PORTS & HARBOURS AUTHORITYDEFENDANT

PARTIES: **Plaintiff Absent**

Defendant Absent

COUNSELS: **Maame Ama Hany ESQ holding brief of Egbert Faibille Jnr ESQ for Plaintiff**

Joshua Nimako ESQ Defendant (Absent)

JUDGMENT

Defendant is a corporate entity established pursuant to the Ghana Ports and Harbours Authority Act, 1986 (PNDCL 160). Plaintiff is a medical doctor who worked on "locum" basis with Defendant's medical services at various times spanning a period of about six years. Subsequently, Defendant offered Plaintiff

appointment as Medical Officer with effect from 1st November, 2012 and posted him to Takoradi subject to medical fitness. By a letter dated 6th December, 2012 (exhibit D), Defendant informed Plaintiff that, he was unsuccessful in the medical examination and with effect from 10th December, 2012 withdrew his appointment. The facts are not disputed. It is Plaintiff's contention that, the basis for the termination of his appointment by Defendant is unfair, discriminatory and violation of his fundamental human rights wherefore Plaintiff claims the following reliefs:

a. A declaration that Defendant ought to have furnished Plaintiff with the full details of the medical examination Plaintiff underwent at the behest of Defendant as part of the conditions of Plaintiff's employment by Defendant and which constituted the ground for Defendant's termination of Plaintiff's appointment.

b. An order directed at Defendant to release the full details of the medical examination Plaintiff underwent at the behest of Defendant to Plaintiff forthwith.

c. A declaration that Defendant's termination of Plaintiff's employment per the letter dated the 6th day of December, 2012 amounts to unfair termination of employment in the intendment of section 63(4)(a) of the Labour Act, 2003 (Act 651).

d. A declaration that Defendant's termination of Plaintiff's employment per the letter dated 6th day of December, 2012 is a violation of Plaintiff's human right to the extent that it is discriminatory in the intendment of Article 17(2) and (3) of the 1992 Constitution.

e. Damages for unlawful termination of Plaintiff's appointment.

f. Costs

g. Any other relief(s) which this Honourable Court deems just and equitable.

At the application for direction, the following issues were settled for trial:

a. Whether or not the termination of the Plaintiff's employment by the Defendant was in accordance with the terms of employment?

b. Whether or not the Defendant having terminated Plaintiff's employment based on his medical status has infringed Plaintiff's right to employment as guaranteed under the 1992 Constitution?

c. Whether or not the Defendant is entitled to a release by Plaintiff of all details of the medical examination he underwent at the direction of Defendant?

d. Any other issues arising out of the pleadings?

On the burden of proof in civil cases, the Supreme Court in *Poku* v *Poku* [2007 - 2008] 2 SCGLR 996 at 1022 per Georgina Wood CJ stated the statutory duty on a party in a civil suit to discharge the burden of proof when it held as follows:-

> *"It raises the legal question of who bears the burden of persuasion in such civil matters, ….Who has the onus of proof and what is the degree or standard of proof? Generally speaking, this depends largely on …. the fact averred and therefore the facts in issue… Generally, the burden of proof is therefore on the party asserting the facts, with the evidential burden shifting as the justice of the case demands. The standard or degree of proof must also necessarily be proof on the preponderance of the probabilities within the meaning of section 12(2) of the Evidence Act, 1975 (NRCD 323)."*

The principle is based on sections 10, 11, 12, 14 and 17 of the Evidence Decree, 1975 (NRCD 323) as follows:

> Section 10—Burden of Persuasion Defined.

(1) 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.

(2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

Section 11—Burden of Producing Evidence Defined.

(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

(4) In other circumstances 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 the fact was more probable than its non-existence.

Section 12—Proof by a Preponderance of the Probabilities.

(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

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

Section 14—Allocation of Burden of Persuasion.

> *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 is essential to the claim or defence he is asserting.*

Section 17—Allocation of Burden of Producing Evidence.

> *(1) Except as otherwise provided by law, the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof.*
>
> *(2) Except as otherwise provided by law, the burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact.*

Whether or not the termination of the Plaintiff's employment by the Defendant was in accordance with the terms of employment? Plaintiff averred that, the only reason proffered by Defendant as basis for the termination of Plaintiff's appointment was that, Plaintiff was not successful in the medical examination he underwent. Defendant contended that the termination of Plaintiff's appointment was strictly in line with the terms of the offer of employment which the Plaintiff wholeheartedly accepted without duress from any person. Defendant argued that as the appointment was subject to medical fitness, failure at the medical examination entitled it to withdraw the offer of appointment; thus the withdrawal was in line with the offer of employment. Plaintiff denies Defendant's position. Section 11(4) of the Evidence Decree put the obligation in civil proceedings, like the instant one, of producing evidence on a party to produce

sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of the fact was more probable than its non-existence. It is all a question of which of the parties was better able to prove its case than the other on all the evidence led at the trial? The offer of appointment letter dated September 28, 2012 stated *inter alia*: "***We….have the pleasure to offer you appointment with Ghana Ports and Harbours Authority as Medical Officer with effect from 1st November, 2012 subject to medical fitness***." The big question is, what is medical fitness or what did the parties to the employment contract intend when they agreed that the appointment was subject to medical fitness. The evidence placed before the court showed that, Plaintiff subjected himself to medical examination after which he was informed by exhibit D that, he was not successful in the medical examination and consequently the offer of appointment was withdrawn. In cross examination, Plaintiff testified thus:

Q *You also agree with me that the paramount clause in the offer, that is exhibit A before you, that your appointment was subject to your medical fitness.*

A *Yes My Lord*

Q *And you agree with me that your termination took place during your probation period*

A *Yes My Lord*

DW2, testified in cross examination thus:

Q *Can you tell this court what the Defendant meant by "subject to medical fitness"?*

A My Lord I wouldn't be able to answer this question because I am not a medical doctor.

Q Can you tell this honourable court the basis for which the Plaintiff's appointment was terminated?

A The basis for the termination of the appointment was his failure to meet the medical test as presented by the medical doctor of the authority.

Q Can you tell this honourable court the result of the medical test which seem to indicate that the Plaintiff had failed the medical examination?

A My Lord I wouldn't be able to answer this question because we just relied on the report as submitted to the CEO and further instructions to me as the head of administration then to terminate the appointment.

Q What was the instruction given to you to terminate his appointment?

A If I could recollect well, it was indicated by the medical doctor that Plaintiff was severely hypertensive and diabetic.

It is not in dispute that the appointment of employment offered Plaintiff, which he accepted was subject to medical fitness. There was no evidence placed before the court to suggest the parameters of what is deemed medical fitness by the parties as far as the employment contract was concerned. DW2 could not tell. In my humble view, medical fitness testing regarding employment is to ensure the prospective employee is fit to perform his or her duties and to keep themselves and others safe in the work place. The question then to ask is, did the medical examination on Plaintiff show he was not fit to perform his duties as a medical doctor and did he present as unsafe to himself and to others at Defendant's work

place? In other words did his medical conditions of diabetes and hypertension hinder his work as a doctor? The medical report on Plaintiff, exhibit F, dated 26th November, 2012 stated as follows:

"FROM : HEAD OF MEDICAL SERVICES

TO : THE DIRECTOR GENERAL HEADQUARTERS

RE: MEDICAL EXAMINATION
DR. FESTUS NII BOYE BOYE – MEDICAL OFFICER

We conducted thorough medical examination on the above-named prospective employee.

He was found to be a known hypertensive and diabetic.

His medical fitness for the job is subject to regular use of medication and regular medical reviews/follow ups.

Forwarded for your necessary attention.

[Sgd]

DR VITUS V. ANAAB-BISI
HEAD OF MEDICAL SERVICES"

There was nothing in exhibit F, to indicate that Plaintiff failed the medical examination or did not meet the medical fitness envisaged by the employment contract. DW1, the author of exhibit F testified in cross examination thus:

Q You gave the final report to the Defendant not so? So you know exactly what you wrote in the report.

A Yes I know

Q And you wrote that the Plaintiff was not fit to practice as a medical doctor in the Defendant, not so?

A I did not.

Q I also put it to you that the medical report that you endorsed, you stated that Dr, Festus Boye is medically fit but has hypertension and diabetes.

A Yes I stated that. If I may explain, that is not the only thing I stated. I stated that he is medically fit if his diabetes and hypertension are well controlled and will require regular follow ups, the issue of his hypertension and diabetes is not in contention.

From DW1's admission, Plaintiff was found to be medically fit, subject to his medical conditions being well controlled and would require regular follow ups. Plaintiff was never declared unfit. It was not shown by the evidence adduced during the trial that Plaintiff's medical conditions were uncontrolled. It was therefore not established by Defendant following the medical examination that Plaintiff was not medically fit in spite of him being hypertensive and diabetic. The reason given by Defendant as grounds for the termination of Plaintiff's appointment was utterly false. The termination was thus not in accordance with the employment contract. There is a clear breach of the contract which makes the termination of the employment contract unlawful.

A question posed to Plaintiff that the termination of his contract was during the probationary period seem to suggest that Defendant was justified in terminating his employment in the circumstances. Section 63(4) of the Labour Act, 2003 (Act 651) stipulates that a termination of employment may be unfair if the employer fails to prove that, the reason for the termination is fair but this provision did not

apply to an employee who was on probation as provided in section 66 (b) of Act 651. The Supreme Court through Ansah JSC stated in *Kobi* v *Ghana Manganese Co Ltd* [2007-2008] SCGLR 771 at 773 that: *"The passing of the new Labour Act, 2003 (Act 651), has brought relief to the employee. The right to terminate employment does not depend on the whims of the employer."* The same case held at holding 1, that "..*the right to terminate is dependent on the terms of the contract and must be exercised in accordance therewith."* This principle presupposes that the employment contract must be terminated in accordance with its very terms. The offer of appointment letter was explicit that the offer was subject to medical fitness thus Defendant was bound by the said term. In order therefore, to justify a termination of the appointment, it was crucial that Defendant found as a fact that Plaintiff was not fit medically to perform his duties as a medical doctor. Section 66 (b) of Act 651 will thus not avail Defendant as the terms of the employment contract appeared to be more favourable than the statutory provisions regarding the termination of an employee on probation. Defendant did not follow its own procedure by showing through the medical examination that Plaintiff was medically unfit to hold the offer of appointment made to him. The termination of the appointment was thus in clear breach of the employment contract and same is unlawful.

The next issue is whether or not the Defendant having terminated Plaintiff's employment based on his medical status has infringed Plaintiff's right to employment as guaranteed under the 1992 Constitution? Plaintiff averred that the basis of the termination of his employment was unfair, discriminatory and a violation of his human rights. The Supreme Court held in *Bank of West Africa Ltd* v

Ackun [1963] 1 GLR 176-182 SC , holding 2 that: "*The onus of proof in civil cases depends upon the pleadings. The party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof.*" The onus is thus on Plaintiff to prove that the termination of his appointment was discriminatory and a breach of his human rights having made those assertions. The court has already found that the termination breached the employment contract as Plaintiff was never found to be unfit per the medical report. Article 17 of the 1992 Constitution states as follows:

> *Article 17—Equality and Freedom from Discrimination.*
>
> *(1) All persons shall be equal before the law.*
>
> *(2) A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.*
>
> *(3) For the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.*

The Supreme Court speaking through Brobbey JSC regarding Article 17 of the Constitution in *Ghana Commercial Bank Ltd* v *The Commissioner, CHRAJ* Civil Appeal No. 11/2002, 29th January, 2003 stated that: "*For the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion or creed, whereby persons*

of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description. When the fundamental law of the land mandates that everyone is equal before the law, the appellant cannot operate a system by which its employees are not equal before the law. A system by which there appears to be different laws for different employees or by which the laws in the bank are applied differently to different employees is surely discriminatory…." It is thus mandated by the 1992 Constitution that all persons shall be equal before the law and a person shall not be discriminated against on grounds of any description by which they may be identified. Plaintiff is both hypertensive and diabetic. Although article 17(2) and (3) do not specifically state disability or persons living with diabetes and hypertension as grounds for discrimination, article 33 (5) of the 1992 Constitution widens the scope of human rights violations thus:

> *"The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man."*

The court takes judicial notice of the fact that diabetes and hypertension affect a substantial number of the adult population the world over. Sufferers can therefore be described by their conditions as being Hypertensive and or diabetic as in Plaintiff's case. Being so identified by such description, sufferers of these medical conditions qualify for protection under the Constitution not to be discriminated against on account of their medical conditions.

Section 59 of the Persons With Disability Act, 2006 (Act 715) defines a "person with disability" as "*an individual with a physical, mental or sensory impairment including a visual, hearing or speech functional disability which gives rise to physical, cultural or social barriers that substantially limits one or more of the major life activities of that individual.*" It is not in dispute that Plaintiff is Hypertensive and Diabetic. Diabetes is a group of metabolic diseases whereby a person has high blood sugar due to an inability to metabolize sufficient quantities of the hormone insulin. Hypertension also is a disorder of abnormally high blood pressure. Both conditions are long-term medical conditions which need medication and or lifestyle changes to manage without which the sufferer may be disabled in the performance of his or her day to day activities. Therefore persons living with hypertension and or diabetes can be classified as disabled persons to afford them the needed protection envisaged by Act 715.

Section 1 of Act 715 stipulates that a person with disability shall not be deprived of the right to participate in, economic activities such as employment. Further section 4(2) of Act 715 provides that, an employer shall not discriminate against a prospective employee or an employee on grounds of disability unless the disability is in respect of the relevant employment. Plaintiff testified thus in cross examination:

Q *How did you know the Defendant?*

A *Closely I have a working relationship with Ghana Ports & Harbours authority for well over six years before I was formally engaged with the Defendant. I was first working on locum basis at Defendant clinic in Tema spanning over a period of six years and there was an*

opportunity where I had to apply formally to work on permanent basis.

Q So you were not working with them?

A I was working for them on part time basis for a period of six years on locum basis then in 2012 there was a job opening in the Defendant clinic and I applied to fill that position.

Q But being on medication what do you mean

A I take medicines to control my hypertension and diabetes and these have been taken for well over 14 years now.

Cross examination of DW1 on 18th April, 2016:

Q For how long has the Plaintiff been your medical colleague?

A I got to know that he was a doctor some few years ago

Q And during those years that you knew he was a medical doctor, did you ever have any indications of his chronic medical conditions interfering with his work?

A No because you cannot tell whether someone has diabetes if you are looking at him and also he had not worked with me before as a permanent doctor.

The uncontroverted evidence is that prior to Plaintiff applying for employment with Defendant, the subject matter of the instant suit, he worked at Defendant's on part time basis, commonly called "*locum*" spanning over six years and during these years, the evidence does not suggest that his medical conditions hindered his ability to perform his duties. Plaintiff's medical conditions cannot therefore, justify Defendant's conduct of withdrawing the offer in the intendment of section 4(2) of Act 715.

Further, the UN Convention on the Rights of Persons with Disabilities, 2006, (CPRD) which Ghana ratified (31 July 2012) states in its Article 1 that: *"The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respects for their inherent dignity. Persons with disabilities include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."* The CPRD, Article 2, goes further to define discrimination on the basis of disability as *"…any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation."* This is a clear demonstration that, both at national level and the world over, rights of disabled person are protected. It is clear that Plaintiff has a disability as without treatment and or with change in lifestyle, he may not be able to function effectively on equal basis with persons who do not have the conditions he has. Section 11(b) of Act 751 provides that: *"A person who employs a person with disability shall provide appropriate facilities required by the person with disability for the efficient performance of the functions required by the employment*." By this, Act 751 entreats employers such as Defendant to make "reasonable adjustments" for persons such as Plaintiff if necessary to ensure efficient performance required of Plaintiff and not resort to termination of his appointment. This will entail a thorough objective assessment of Plaintiff to ascertain what his requirements are

if at all to ensure his efficiency on the job. This Defendant failed to do and same amounts to discrimination on grounds of Plaintiff's disability.

In determining whether an employer has discriminated against an employee in terminating his or her appointment on grounds of disability, I think the test to apply is whether the reason for the termination of the employment is the employee's disability and if so whether the employer failed to make any reasonable adjustment. In the instant case, it is without doubt that Plaintiff's employment was terminated because of his medical conditions which Defendant failed to ascertain whether or not a reasonable adjustment would have ensured his efficiency. In the light of the above, by the withdrawal of the offer of appointment by Defendant on grounds that Plaintiff is diabetic and hypertensive and failure to assess Plaintiff for reasonable adjustment if necessary amounts to discrimination by Defendant against Plaintiff and will so hold.

The third issue is whether or not the Plaintiff is entitled to a release by Defendant of all details of the medical examination he underwent at the direction of Defendant? Plaintiff testified that Defendant communicated to him that he was not successful in the medical examination he underwent and yet Defendant failed to furnish him with the results of the medical examination. It was held in *Parslow* v *Masters & Great-West Assurance Company* (1993) 6 W.W.R 273 Sack QB that, a person is entitled to the production of independent medical examination reports on the basis that the patient had a personal interest in medical documentation pertaining to him or herself. The Judge in the *Parslow* case relied on the principles set out in the Supreme Court of Canada in the case of *McInerney* v *Macdonald* (1992) 2 SCR 146 (SCC) and concluded that: *"While it is true that Great-West paid*

for the medical report in respect of Parslow, it is also true that Parslow was required to disclose private and personal information about herself to enable Masters prepare the report. In this respect, a physician-patient relationship was created, even if the purpose of the medical consultation with Masters was not to enable him advise Parslow and prescribe a course of treatment for her…..There is at best only a difference of degree and not of substance in the situation where the patient attends a physician for a third party medical rather than for professional services." Plaintiff having submitted to medical examination and undoubtedly provided his private and personal information is entitled to copy of the result on grounds of his personal interest. It was therefore out of order for Defendant to deny him copy of the medical results culminating in the medical report prepared at the instance of Defendant. During the trial, DW2 was ordered by the court to produce the medical report on Plaintiff, exhibit F, which has been reproduced above. The report does not give details of the results which led to the examining doctor's conclusion that Plaintiff was found to be a known hypertensive and diabetic. DW1, a medical officer with Defendant who authored the medical report testified at paragraph 5 of his witness statement that: *"Plaintiff was among a number of medical officers who were referred by the Defendant to the clinic for medical examination. My goodself and other colleague medial doctors at the clinic conducted a thorough medical examination on the Plaintiff and found out that he had some chronic medical condition."* In spite of this assertion of having conducted a thorough medical examination culminating in definite findings, Defendant was unable to produce evidence of the results of the medical examination if truly same did exist. Regarding the above quoted paragraph 5, DW1 was cross examined thus:

Q Since the medical report was delivered to you for which you certified and sent up to the Authority and you were the head of the team that conducted the investigation, can you educate this Court the sort of investigations that were taken or conducted?

A We have a standard medical exams format from prospect employees and everybody goes through the same format by way of laboratory investigations, physical examination including eye examination and everything is put together for the final report.

Q And based on those results you arrived at a conclusion that the Plaintiff is medically unfit not so?

A I forwarded our report to the employers.

Having testified that Plaintiff went through the standard medical format at Defendant's which included laboratory investigations among others, it would have been expected that the medical report will contain outcomes of the results forming the basis of conclusions in the report. DW1 was even evasive when asked whether his conclusion was based on the results to make a finding that Plaintiff was unfit. Plaintiff testified at paragraph 19 of his witness statement that, at all material time, his medical condition was disclosed to the Defendant's medical Director. I find Plaintiff's story more probable than Defendant's. I am inclined to come to the conclusion that, Defendant did not conduct any thorough medical examination on Plaintiff but if it did, the results were so satisfactory that it would not advance the course of Defendant; that is probably why details of the medical examination results have not surfaced anywhere. In the light of the above I am of the opinion that, Defendant decided when it had the information that, Plaintiff was both hypertensive and diabetic to withdraw the offer of appointment. If it were not so, after a thorough medical examination, the medical report, exhibit F,

will show the basis of the conclusion in the report. Consequently, even though, Plaintiff is entitled to the release of details of the medical examination results, there is no point in making an order for the release of same as the court is not convinced further medical report/results exists apart from exhibit F, which was provided at the trial.

In conclusion, the court finds the termination of Plaintiff's employment with Defendant unlawful on grounds of breach of the employment contract and discrimination. Is Plaintiff thus entitled to his claim? Plaintiff is claiming damages for unlawful termination of his appointment, costs and any other relief(s) as the court may deem fit. It remains the common law that, the remedy available to an employee who has been wrongfully dismissed or terminated is an action for damages as enunciated in *Felix Yaw Bani v Maersk Ghana Limited* Civil Appeal No. J4/48/2010 SC 30th March 2011. The general principle as laid down in the *locus classicus*, *Hadley* v *Baxendale* [1854] 9 Ex 341 is that, the claimant is entitled to full compensation for his loses (*restitutio in integrum*). It was held in *Ashun* v *Accra Brewery Limited* [2009] SCGLR 81 that '…. *In principle, in the absence of any contrary statutory or contractual provision, the measure of damages for wrongful termination of employment….was compensation based on the employee's current salary and other conditions of service for a reasonable period within which the aggrieved party was expected to find alternative employment… That quantum was subject to the duty of mitigation of damages.*' It was further held in *Societe General de Compensation* v *Ackerman* (1972) 1GLR 413, CA holding 6, that: "*The measure of damages for wrongful dismissal is the loss thereby incurred; and subject to the duty of a plaintiff to mitigate his loss, it will normally be the amount*

of wages due and payable for the agreed period of service inclusive of any other benefit to which he is entitled by virtue of the contract. Steps to be taken by a plaintiff in mitigating his loss is a question of fact not of law; and the burden of proof is on a defendant not on a plaintiff…" The court in this case relied on *Payzu*, *Ltd*. v. *Saunders* [1919] 2 K.B. 581 at p. 588, C.A.; *Roper* v. *Johnson* (1873) L.R. 8 C.P. 167 at pp. 181-182 and *Yetton* v. *Eastwoods Froy Ltd*. [1966] 3 All E.R. 353. The onus on the issue of mitigation of damages thus lies on the Defendant. No evidence was adduced by way of cross examination or otherwise as to whether or not Plaintiff failed to mitigate his losses. Defendant thus failed in the discharge of this burden of mitigation. Plaintiff being a medical officer with vast experience, having worked in quite a few establishments should be able to secure a job in a year. Accordingly, the court awards Plaintiff one years' salary as damages for breach of contract resulting in the unlawful termination of his appointment.

In assessing the level of compensation in discrimination cases, pecuniary loss arising directly from an act of discrimination, damages and injury to feelings must be taken into account. The court has already awarded damages for breach of the employment contract resulting in the termination of the employment contract in terms of loss of earnings. In *HM Prisons Service and others* v *Johnson* [1997] IRLR 162, the Employment Appeal Tribunal upheld an award for injury to feelings made by the industrial tribunal to a claimant in a discrimination case. There have been a plethora of cases in the British jurisdiction such as *Vento* v *Chief Constable of West Yorkshire Police* [2003] IRLR 102 and *Da'Bell* v *NSPCC* (UKEAT/0227/09) where awards were made in discrimination cases for injury to feelings. I believe same would be an appropriate compensation in the circumstances. The court will

therefore, award Plaintiff thirty thousand Ghana Cedis (GHS30,000.00) for injury to feelings. Account is also taken of the industry of Plaintiff's Counsel in prosecuting this case, costs is therefore, assessed at five thousand Ghana Cedis (GHS5, 000.00).

[SGD]

Justice Gifty Dekyem (Mrs)
Justice of the High Court, Labour Division 1, Accra

Cases cited:

Poku v *Poku* [2007 -2008] 2 SCGLR 996

Kobi v *Ghana Manganese Co Ltd* [2007-2008] SCGLR 771

Bank of West Africa Ltd v *Ackun* [1963] 1 GLR 176-182 SC

Ghana Commercial Bank Ltd v *The Commissioner, CHRAJ* Civil Appeal No. 11/2002, 29th January, 2003

Parslow v *Masters & Great-West Assurance Company* (1993) 6 W.W.R 273 Sack QB

McInerney v *Macdonald* (1992) 2 SCR 146 (SCC)

Felix Yaw Bani v Maersk Ghana Limited Civil Appeal No. J4/48/2010 SC 30th March 2011

Hadley v *Baxendale* [1854] 9 Ex 341

Ashun v *Accra Brewery Limited* [2009] SCGLR 81

Societe General de Compensation v *Ackerman* (1972) 1GLR 413, CA

Payzu, *Ltd*. v. *Saunders* [1919] 2 K.B. 581 C.A.

Roper v. *Johnson* (1873) L.R. 8 C.P. 167

Yetton v. *Eastwoods Froy Ltd*. [1966] 3 All E.R. 353

HM Prisons Service and others v *Johnson* [1997] IRLR 162

Vento v *Chief Constable of West Yorkshire Police* [2003] IRLR 102

Da'Bell v *NSPCC* (UKEAT/0227/09)