

CASE DIGEST

EMPLOYMENT LAW: PROBATION;
EXTENSION OF PROBATION;
DOES THE EXTENSION OF AN
EMPLOYEE'S PROBATIONARY
PERIOD REQUIRE NOTIFICATION
FROM THE EMPLOYER?

MR. OLAJUWON OLALEYE v. POLARIS BANK
LIMITED & ORS.

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MR. OLAJUWON OLALEYE v. POLARIS BANK LIMITED & ORS.

NATIONAL INDUSTRIAL COURT
(LAGOS DIVISION)

(IKECHI GERALD NWENEKA, J)

Background Facts

Mr. Olajuwon Olaleye (Claimant) was employed by the defunct Afribank Nigeria Plc, which was changed to Mainstreet Bank Limited and later to Skye Bank Plc and then to Polaris Bank Limited (1st Defendant), as General Manager, e-Solutions for a probationary period of six months, subject to confirmation on the satisfaction of the following conditions: 1) Receipt of satisfactory reports from your last employers and referees; 2) A satisfactory medical report from our (bank) named medical consultant; 3) Report of satisfactory performance from your Branch Manager. The Claimant asserts that he satisfied the above conditions, and that in spite of this, his impressive job performance, and approval of his confirmation appraisal by his line Executive Directors, Mr. Nebolisah Arah and Mr. Stephen Adaji the (the 2nd and 3rd Defendants respectively), treated his confirmation of employment with reckless indifference; and the Defendants' arbitrarily and unlawfully held up the confirmation of his employment without any justification. Notwithstanding the non-confirmation of his appointment, the 1st Defendant retained him in its employment, redeployed him as Head, Commercial Banking Strategic Business Unit, and granted him staff loan which was only for confirmed employees.



The Claimant further stated that he was in the 1st Defendant's employment until when he was informed that his appointment could not be confirmed because his services were no longer required. He alleged that he was the only senior management staff whose employment was not confirmed after 31 months in the employment of the 1st Defendant. It is his case that the Defendants terminated his employment without notice about two years after the expiration of his probation and without payment of any severance benefits or entitlements for the period he worked in full capacity as General Manager. Thus, claiming for the benefits that would have accrued to him as a General Manager in the Bank, the Claimant raised certain issues for determination, of which one is: Whether the non-confirmation of the Claimant's appointment after 31 months of continuous service to the 1st Defendant is arbitrary, exploitative and wrongful?

Arguments

Counsel for the Claimant argued that the Claimant not only followed the due process for his employment and was successful at every given task and ought to have been confirmed upon expiration of his probation, but also satisfied the 1st Defendant's requirement for confirmation of employment and was commended for outstanding job performance and his line Executive Director confirmed his appraisal and forwarded it to the 2nd and 3rd Defendants who frustrated the confirmation process. In spite of this, the Claimant was made to undertake tasks as Head, Commercial Banking Strategic Business Unit implying that his services were retained and he could access loans which was available to only confirmed staff. Learned counsel further stated that by keeping an employee and paying his salary after the expiration of the probationary period, the employer would be deemed by operation of law to have confirmed his appointment and the doctrine of "estoppel by conduct" would operate to prevent the employer from treating him as still on probation. He submitted that having retained the Claimant after his probation and granting him the same rights as confirmed employees, the Claimant is entitled to prior notice, payment of his full emoluments and entitlements and the Defendants' failure to do so is arbitrary, oppressive and unlawful. The Court was urged to so hold.

In response, Counsel for the Defendants contended that the Claimant cannot be restored to the position of a confirmed staff having already left the services of the Bank. He stated that the Bank complied with the law in paying the Claimant based on quantum meruit for services rendered after the expiration of 6 months from the date of his employment and urged the Court to refuse the relief on compensation as a confirmed staff because the parties did not agree on the amount to be paid upon confirmation and there is no such evidence before the Court. Counsel further posited that in terminating the appointment of a probationary staff, the freedom to hire and fire lies with the employer; and that the Claimant was still on probation when his employment was terminated. Learned further pointed out that the issue of entitlement to a position an employee would occupy is not justiciable except in statutory employment, and this was not the case. He submitted that the Claimant's case to the effect that there was an objective appraisal of his performance which he passed, and the employer was bound to confirm him; failing which the Court should confirm him on behalf of the employer, should be discountenanced by the court.

Decision of the Court

In resolving this issue, the court held that:

An employer has no right to keep an employee on probation indefinitely. The court held further that Probation is a short-term measure and where, at the end of his probation, the employee is adjudged unsuitable for the job, the employer could extend the probation or terminate the employment. Where the employer opts for the first option, it must inform the employee that it has adjudged him unsuitable for his job role but would be giving him another opportunity to justify his employment. Extension of probation cannot be implied and a probation which exceeds the agreed period without a formal extension will amount to unfair labour practice. In that case, the employer will be deemed to have confirmed the employee's appointment and cannot argue otherwise.

This is based on the equitable principle of estoppel which is to the effect that where a person by words or conduct willfully causes another to believe the existence of a state of affairs and induces him to act in reliance thereof, he will be bound by the fair inference to be drawn from his words or conduct.

Issue resolved in favour of the Claimant.

Oladapo Akinosun Esq., Ayodeji Jolaoso Esq., Oluwadara Omoyele Esq., Akinrinwa Omotayo Esq., Prince Adegoke Adedoyin Esq., Mrs. Oluwatobi Abobarin, Chinedu Ashimole Esq. and Adebola Soyode Esq. for the Claimant

Umunna Achike Charles Esq. for the Defendants

This summary is fully reported at (2023) 4 CLRN.

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