CIV.APP. NO.24 / 2024

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

BANK OF SIERRA LEONE - APPELLANT



AND

YADA WILLIAMS & ASSOCIATES - RESPONDENT

CORAM:

Hon. Mrs. Justice F. B. Alhadi JSC - Presiding

Hon. Mr. Justice R. Fynn JA

Hon. Mrs. Justice T. Barnett JA

Counsel:

P. Lambert Esq - For the Appellant

C. I. Pateh Bah Esq

Y. Williams Esq - For the Respondents

J. Noldred Ms.

B. Kutubu Esq

JUDGMENT DELIVERED THIS DAY OF JUNE 2026.

ALHADI JSC: On the 18th of March 2024 a Notice of Appeal was filed by the Appellant against the Judgment of the Learned Trial Judge (LTJ), Hon. Mr. Justice M. Bawoh, J. dated the 14th day of February 2024 on the following grounds:

3 (I) The Learned Trial Judge misdirected himself and erred in law and fact and came to an erroneous decision when he held in his Judgment that the Respondent's claim for retainership is from the 1st of June 2018. The Learned Trial Judge failed to give any or any proper consideration to the fact although the Respondent claimed that the agreement with the Governor was for a retainership commencing in July 2018 to July 2019, but the Respondent made the following submission at paragraph 12.2 at page 8 of their written address to the Court as follows:-

"PW1 during cross-examination by counsel for the Defendant testified that the Plaintiff's case was based on the retainer agreement of the 1st November 2016 and the draft retainer agreement that was forwarded to the Plaintiff by the Defendant following the visit of the Governor of the Defendant's establishment on the 17th July 2018 in which he offered a year's contract to the Plaintiff which was there and then accepted. The Plaintiff concedes that the retainer agreement of 1st November 2016 contains an arbitration clause, and that this court is not the proper forum to deal with matters emanating from the said retainer agreement. The Plaintiff therefore abandons its claim for fees for the period 1st June 2018 to 16th July 2018."

PARTICULARS OF MISDIRECTION AND ERRORS OF LAW

"The simple question before the court is whether the 'Arrangements' between the Plaintiff and the Defendant and their actions thereof from the 1st June 2018 to 4th June 2019 amounted to a valid contract; thereby entitling the Plaintiff herein to recover the sum as in his claims before this court."

"An additional question, a side comment worthy of consideration is whether the Plaintiffs were put in a position –objective wise to believe that the retainership from 1st June 2018 effected and thus executed purposely so referred to as a valid contract."

(II) That the Learned Trial Judge erred in fact and law when he failed to give consideration to issue of whether the court was the property forum for this matter as the Respondent obviously states in it address at paragraph 12.2 as follows:

"The Plaintiff concedes that the retainer agreement of the 1st November 2016 contains an arbitration clause, and this court could therefore not be the proper forum to deal with matters emanating from the said retainership agreement."

(III) That the Learned Trial Judge erred in law and in fact in that he failed to give any or any proper consideration to the fact that the Respondent had, in arbitration proceedings (which were instituted by the Respondent, claimed to be entitled to retainer fees which are the subject matter of the action in the High Court) claimed to

be at all time entitled to the said retainership fees under the terms of the 2016 Retainership agreement signed between the Appellant and the Respondent, but in the proceedings before the Court the Respondent claimed that the claim for retainer fees was brought under the unsigned 2018 retainer agreement which was sent to the Respondent by the Appellant to the Respondent in July 2018. These clear contradicting evidence and submissions of the Respondent to the Arbitrator and the Court were not explained not addressed by the Respondent in its evidence and address to the Court. It was likewise completely ignored by the Learned Trial Judge in his Judgment which led to an erroneous finding that there was in fact and law a contract between the Appellant and the Respondent pursuant to the unsigned 2018 retainership agreement.

(IV) That the Learned Trial Judge erred in law and fact when he found that following the meeting between the then Governor of the Appellant and the Respondent held at the Respondent's offices there was a valid contract between the Appellant and the Respondent and opined and found that-

"It is clear to this court that an agreement alone does not constitute a contract. Also, it is clear to this court that a written contract must be signed by both parties to be legally enforceable but however, some do not require signatures or could be considered to be conclusive of their respective…".

Relief Sought:

I. That the judgment of the Learned Trial Judge dated 14th February 2024 be set aside and that judgment be entered for the Appellant.

Summary of the Facts of the Case

In 2016, the Respondent entered into a one -year retainer agreement with the Appellant, for the provision of legal services from 1st November 2016 to 31st October 2017. By a letter dated 9th October 2017, the Appellant requested an extension of their retainer agreement to the 31st of December 2017. By a letter dated 9th October 2017 the Respondent accepted the extension subject to the same terms as the retainer agreement. By an agreement between the Appellant and the Respondent, they both further extended the Retainer Agreement to cover 1st January 2018 to the 31st March 2018.

Subsequent to this, the Respondent continued to do work which was referred to it by the Appellant, despite not expressly extending the agreement. On the 17th of July 2018, the parties met (the then Governor) and agreed on the terms of a new agreement to cover the period July 2018 to July 2019. A new draft agreement was forwarded to the Appellant on 24th July 2018. The new agreement was not executed by the parties, until the parties terminated their relationship in April 2019.

By a letter dated the 22nd March 2019, the Respondent terminated the said agreement despite the fact that it was unsigned and undated and a draft. The Governor then accepted the termination by the Respondent.

Submissions by Counsel for the Appellant

Learned Counsel for the Appellant submitted extensively on the law governing contract formation, termination, implied contracts, arbitration consistency, and the burden of proof. Counsel argued that the learned trial judge fundamentally misdirected himself by finding contractual liability where, in law, none could exist.

Counsel submitted that the 2016 Retainer Agreement, being a fixed-term contract, expired by effluxion of time on 31st of May 2018 after its final agreed extension.

Reliance was placed on the classical common law principle that a contract for a fixed duration comes to an end automatically upon expiry of the agreed terms, unless renewed by express agreement. Counsel cited Chitty on Contracts (34th ed.), para 23-005, which states:

> *"Where a contract is made for a fixed term, it terminates automatically at the end of that term unless renewed or extended by agreement."*

Counsel further relied on Attorney-General v Winstanley (1831) 2 Dow & Cl 302, where it was held that obligations under a contract do not survive its expiration unless expressly preserved.

It was submitted that once the 2016 Agreement expired, all its clauses, including the arbitration clause and the termination notice clause, equally expired. Counsel argued that the learned trial judge erred in law by importing rights and obligations from an expired agreement into a new and disputed period.

Counsel submitted that the unsigned and undated 2018 draft retainer agreement could not, in law, constitute a binding contract.

First, counsel argued that the draft lacked certainty of essential terms, particularly the commencement and termination dates. He relied on Scammell v Ouston [1941] AC 251, where the House of Lords held that an agreement which leaves essential terms uncertain is unenforceable.

Secondly, counsel submitted that the parties clearly intended execution as a condition precedent. Reference was made to the Respondent's letter dated 19th February 2019 (Exhibit at p. 267), where the Respondent complained that the agreement had not yet been forwarded "for execution."

Counsel relied on the case of RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG [2010] UKSC 14, emphasizing Lord Clarke's dictum that: *"The question is whether the parties intended to be bound, objectively assessed."*

Counsel submitted that objectively, a party repeatedly demanding execution cannot later assert that execution was unnecessary.

Learned Counsel submitted that even if the draft agreement constituted an offer, the Respondent's letter dated the 23rd of August 2018 amounted to a counteroffer, not an acceptance.

Counsel argued that the delay altered a fundamental term, namely commencement in July 2018, which is reflected in the draft agreement. Reliance was placed on the case of Hyde v Wrench (1840) 3 Beav 334, where it was held that a counteroffer extinguishes the original offer.

It was therefore submitted that no consensus ad idem was ever reached, and without such consensus, no contract could arise.

Counsel for the Appellant conceded that the law recognises implied contracts but argued that the facts of this case do not meet the threshold.

Counsel distinguished G Percy Trentham Ltd v Archital Luxfer Ltd [1993] 1 Lloyd's Rep 25 (CA), relied upon by the Respondent, on the basis that in that case, there was actual performance and payment.

He relied instead on the case of British Steel Corp v Cleveland Bridge & Engineering Co Ltd [1984] 1 All ER 504, where Robert Goff J. held, that courts will not impose contractual obligations where parties deliberately leave matters incomplete.

Counsel submitted that mere availability to act as solicitors, without instructions or payment, is legally insufficient to find an implied retainer.

Counsel also submitted that the Respondent was legally and evidentially bound by its prior position in the arbitration proceedings, where it unequivocally asserted that its claims arose under the 2016 Agreement.

Reliance was placed on the doctrine against approbation and reprobation, as articulated in Joe Iga & Ors v Amakiri & Ors (1976) 11 SC 1, where the court held that a party cannot take inconsistent positions to suit convenience.

Counsel argued that while estoppel may not strictly arise, the Respondent's contradictory positions rendered its evidence unreliable and unsafe to act upon.

Learned Counsel submitted that the claim for three months' retainer fees had no legal foundation.

Clause 9 of the 2016 Agreement could not apply after expiry. Further, the law does not imply notice periods into non-existent contracts.

Reliance was placed on Martin-Baker Aircraft Co Ltd v Canadian Flight Equipment Ltd [1955] 2 QB 556, which counsel argued presupposes an existing contractual relationship.

Counsel urged the Court to set aside the award in its entirety.

Submissions by Counsel for the Respondent:

Learned Counsel for the Respondent equally submitted that the Learned Trial Judge was correct in law and that the Respondent was entitled to the reliefs granted in his judgment.

Counsel submitted that signature is not a prerequisite to contract formation.

He relied on the case of Brogden v Metropolitan Railway Co (1877) 2 App Cas 666, where the House of Lords held that a contract may be concluded by conduct even in the absence of formal execution.

Counsel argued that once the Respondent accepted the terms of the draft retainer agreement by letter dated 23rd of August 2018, the essential terms were agreed.

Counsel relied on the case of RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG [2010] UKSC 14, submitting that the Parties' intention must be assessed objectively.

It was argued that the Appellant's conduct, by forwarding a draft agreement, holding meetings, and failing to reject the Respondent's acceptance objectively demonstrated an intention to be bound by the said 2018 retainer agreement.

Counsel submitted that even if the 2018 draft was not binding, the law would imply a retainer agreement based on prior dealings.

He relied on Hillas & Co Ltd v Arcos Ltd (1932) 147 LT 503 (HL), where the House of Lords upheld a contract based on prior course of dealing.

Counsel further argued that the Respondent had acted as retained solicitors and held itself available, which sufficed to ground an implied contract.

Counsel submitted that where a retainer is terminated without notice, the law implies reasonable notice.

He cited the case of Martin-Baker Aircraft Co Ltd v Canadian Flight Equipment Ltd [1955] 2 QB 556, where reasonable notice was implied into a continuing business relationship.

Counsel argued that three months was reasonable, having regard to the parties' history and the terms of the 2016 Agreement.

Counsel also submitted that pleadings filed in arbitration proceedings cannot operate as estoppel in subsequent court proceedings.

It was argued that those pleadings were alternative legal arguments, not admissions of fact. He relied on the general principle that parties may plead in the alternative, provided there is no abuse of process.

ANALYSIS OF THE LAW FACTS AND EVIDENCE

Ground 3 (I) and 3 (II) : Contract Formation and Validity

The Appellant's main contention under this ground is whether the Retainer Agreement of the 1st of June 2018 to 4th June 2019 amounted to a valid contract between the Appellant and the Respondent.

In the case of Brogden v Metropolitan Railway Co (1877) 2 App Cas 666 opined, it was held that a contract may be concluded by conduct even in the absence of formal signature or execution, where the parties have acted as though they are bound. Lord Blackburn emphasised that the decisive question one must ask is whether the parties' behavior demonstrates consensus ad idem. The Appellant's reliance, therefore, on the unsigned nature of the 2018 draft retainership agreement failed to

note that signature is evidentiary and not constitutive, of contractual intention."

Further, the invocation of Scammell & Nephew Ltd v Ouston [1941] AC 251 by the Appellant, proposing that the blank dates of the contract rendered the draft retainer agreement unenforceable for want of certainty, is untenable. This is because even in the case of Scammell itself, the hire-purchase terms by the parties were left entirely at large with no mechanism for determination and no prior course of dealing to fill the gap. The agreement was therefore held as incomplete on a vital commercial term.

The present case is materially distinguishable. The 2018 draft retainer agreement identified the parties, the scope of services, the fee structure, and the duration (one year), leaving only the precise day in July of 2018 for commencement of the said agreement, blank. However, Clause 1 of the said agreement, expressly contemplated commencement by the stated terms to wit: *"with effect from the.....day of July 2018"*. It is our view that in such circumstances, this court ought not to defeat the parties' manifest intention merely because a date remain to be filled.

Chitty on Contracts, 32nd edition at P.265, in its exposition on "Incomplete Agreements", states that, "an agreement may be complete although it is not worked out in meticulous details". Where the remaining matters can be determined by reasonableness, statute, or prior course of dealings, the contract is indeed enforceable. Perry v Suffields Ltd [1916] 2 Ch 187 also points out that, where an offer to sell a public house with vacant possession was accepted without specifying the completion date or deposit, a binding contract was nevertheless held to exist because the parties intended immediate commitment on the bare essentials.

Similarly, in the case of Pagnan SpA v Feed Products Ltd [1987] 2 Lloyd's Rep 601, it was held that agreements on cardinal terms (i.e. product, price, quantity, shipment period), sufficiently sufficed even though loading port, rate of loading, and certain contingent payments remained unresolved; the Court of Appeal upheld the contract because the parties intended to be bound at once.

Relying on the above cases, it is our view that the 2018 draft retainer agreement falls within this category. The parties' prior retainers under the 2016 Agreement, provided the necessary context, which is, fees were paid monthly in advance, services were rendered continuously, and the termination of same required notice. The blank dates could readily be supplied by implication, i.e. commencement on or about the date the draft was forwarded (i.e. the 24th of July 2018) or, at latest, the date of the Respondent's acceptance (23rd August 2018), with termination one year thereafter.

Equally important is the Appellant's own conduct of forwarding the draft agreement, holding meetings, and permitting the Respondent to continue acting under the said agreement, thereby objectively manifesting acceptance. In the case of RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG [2010] UKSC 14, the Supreme Court held that, contractual intention is assessed objectively. The court opined that "*The question is whether the parties intended to be bound*" and not whether both parties formalised their intention to be bound by the contract. Moreover, Lord Clarke, emphasised that substantial performance and the absence of any reservation of rights point strongly towards a concluded contract. In this case, the Respondent performed for months; the Appellant never demurred. The Respondent's later reference to "execution" in the letter of 19th February 2019, does not negate the Appellant's earlier acceptance; it merely sought formalisation of an already binding arrangement between the Parties, consistent with commercial practice.

In his submissions to the Court, Counsel for the Appellant, Mr. Lambert, referred to the letter of the 23rd of August 2018 as a counteroffer under the principle in Hyde v Wrench (1840) 3 Beav 334. It is our view that the Hyde v Wrench case is contextually different from the issue at hand. It is also our view that, the ruling in Hyde v Wrench (1840) 3 Beav 334, applies only where the purported acceptance introduces new terms that alter the original offer.

The Respondent's following letter accepted the draft entirely as it was, with the only variation being the natural passage of time between July and August, which is not a fundamental alteration given the blank dates in the draft document itself. Consequently, it is the view of this Court, that no authority or legal arguments supports the Appellant's position, that a short delay in acceptance, without more, extinguishes the Respondent's offer, when the offeror remained silent and continued to receive the benefit of performance under the agreement. Therefore, the LTJ's finding that the Retainer Agreement of the 1st June 2018 to 4th June 2019 between the parties herein, is a valid contract, is correct. Therefore, Ground 3 (I) of the appeal fails and is accordingly dismissed.

Ground 3 (II & III): Forum, Alleged Inconsistency in the Respondent's Positions and Notice For Contract Termination.

Grounds II and III shall be jointly analysed as they both seemingly revolve around similar issues of forum for the dispute and the purport inconsistent statements by the Respondent.

In the Apellant's arguments under the said grounds II and III, Counsel invoked the doctrine against approbation and reprobation, drawn from the Nigerian case of Joe Iga & Ors v Amakiri & Ors (1976) 11 SC 1, citing the Respondent's inconsistent statements in proceedings from the arbitration process and the court below. The principle on approbation and reprobation is a doctrine which prevents a party from adopting inconsistent positions in the same proceedings or where the inconsistency amounts to an abuse of process. However, it must be noted that this principle has no application across separate and distinct proceedings addressing different disputes.

This court agrees with the Respondent that its pleadings in the arbitration that the entitlement *"arises under the 2016 Retainer Agreement"*, were alternative legal characterisations advanced in that forum; they do not constitute judicial admissions binding in these proceedings.

Our laws do not preclude Parties to plead in the alternative and to advance different legal analyses in different tribunals without estoppel arising, provided there is no abuse of process. Redfern and Hunter on International Arbitration (7th ed.), confirms that arbitration is a consensual, separate process; positions taken within it do not automatically bind the parties in national courts on distinct issues. The Respondent's conduct in the arbitration was not an admission of fact but a legal submission tailored to that tribunal's jurisdiction. To hold otherwise would tend to undermine the flexibility and efficacy which make arbitration attractive. Therefore, the LTJ was right not to countenance the arbitration pleadings in the Respondent's court proceedings.

On the issue of notice, McNair J held in the case of Martin-Baker Aircraft Co Ltd v Canadian Flight Equipment Ltd [1955] 2 QB 556, that in the absence of an express termination clause, a distributorship agreement of indefinite duration could only be terminated on reasonable notice; three months was held reasonable in the circumstances. This principle applies to any ongoing professional relationship, including solicitor retainership, where the client has come to rely on the solicitor's availability and expertise.

In their arguments, Counsel for the Appellant contended that no notice period could arise because no contract subsisted after the 31st of May 2018 between the Parties. This Court is of the view that, the implication of reasonable notice follows as a matter of law in any continuing commercial relationship.

The Parties' history under the 2016 Agreement itself provides for notice and thence supplies the benchmark for reasonableness; three months was the very period the Appellant had previously accepted as appropriate. To deny the Respondent any notice entitlement would be to reward the Appellant's own failure to give notice or to appoint alternative counsel while continuing to benefit from the Respondent's services. The award of three months' fees is therefore not only lawful, but the minimum justice would demand in this case. We therefore hold that the LTJ was

right to decline to treat the arbitration pleadings as decisive against the Respondent's claim and Ground 3 (II and III) therefore fail and are accordingly dismissed.

Ground 3 (IV): The Conduct of Both Parties.

The Appellant's argument, is that the conduct of the Appellant and the Respondent following the meeting between the Governor and the Respondent, including the negotiations for payment, performance of duties under the unsigned 2018 retainer agreement and more, could not have amounted to a valid contract between the said parties.

The law has long recognised that contracts, particularly, professional retainer contracts, may be implied where one party renders service with the knowledge and acquiescence of the other and the circumstances demonstrate an expectation of remuneration.

In the present case, the Appellant seeks to distinguish the principle in G Percy Trentham Ltd v Archital Luxfer Ltd [1993] 1 Lloyd's Rep 25 (CA), from the present case, on the basis that there was "actual performance and payment" between the Parties. This distinction is not sustainable. In the case of Trentham supra, it was held that a contract could be inferred from conduct where the parties had acted as though they were bound, even without a single document executed by both. Therefore, the existence of performance and the absence of protest are manifestly decisive in this case.

The same principles apply here, i.e. the Respondent held itself available, continued to handle the Appellant's pending litigation, and the Appellant accepted those services without objection or alternative instruction. Although payment had not yet been made, it remains the subject of the claim before the court. Which is, that the Appellant's obligation to pay the Respondent arose from an implied contract, and not as a precondition to the existence of the contract itself.

Counsel for the Appellant, Mr. Lambert also relied on the case of British Steel Corp v Cleveland Bridge & Engineering Co Ltd [1984] 1 All ER 504, where no contract was held to be formed because the parties were still negotiating essential terms – the price and delivery dates to be specific; but there was no prior course of conduct to rely on, in absence of these essential terms, and most importantly, the work was done under an expressly non-binding letter of intent. Robert Goff J stressed that restitutionary recovery was an available remedy, precisely because no contract had existed. Here, by contrast, the essential terms were settled in the draft, accepted by the Respondent, and acted upon.

The Parties' long prior course of dealing under the 2016 Retainer Agreement further fills any gaps, as recognised in Hillas & Co Ltd v Arcos Ltd (1932) 147 LT 503 (HL). Here the House of Lords upheld a vague agreement for the supply of timber because the parties' previous dealings supplied the necessary certainty which were missing in the later drafted agreement. The same reasoning of law governs a solicitor-client relationship that had subsisted for years on identical terms.

Chitty on Contracts, 32nd edition at Page 265 - 266, reinforces this analysis. In the section on incomplete agreements relied upon by the Counsel for the Appellant, the textbook acknowledges that "an agreement is also incomplete if it expressly provides that it is 'subject to' specified points", but emphasises the converse that where no such condition precedent is expressed and the parties proceed as though bound, the court will not impose a requirement of further formality. The Respondent's conduct in continuing to provide services and demanding payment pro-rata, as had been done since their retainer agreement expired by effluxion of time, was unequivocally referable only to a contractual retainer. Mere "availability" without instruction might be neutral, but here instructions were implicit in the Appellant's failure to appoint replacement counsel and its continued reliance on the Respondent in ongoing matters.

In view of the foregoing, the Court upholds the LTJ's findings that following the meeting between the Appellant and the Respondent, their subsequent agreements and conduct, there subsisted a valid contract between the said parties. Consequently, grounds 3 (iv) of the Appellant's appeal is Dismissed.

CONCLUSION

As an appellate court, this Court is entitled to re-evaluate evidence, guided by the principles in Peters v Sunday Post Ltd [1958] EA 424, which cautions against disturbing a trial judge's findings unless they are plainly wrong.

The Learned Trial Judge had the advantage of seeing the witnesses and evaluating the documentary record. He weighed the documents pertaining to this matter, to wit; the procurement evaluation report, the 24th July 2018 draft, the 23rd August 2018 acceptance, the continued performance, and the absence of any repudiation by the Appellant. The Respondent's 19th February 2019 letter, far from undermining its case, confirms both the ongoing services and the expectation of payment, which is precisely an illustration of a conduct that gives rise to an implied contract under Trentham and Hillas.

Equity looks to the intent rather than the form; hence the Appellant's emphasis on the form of the retainer agreement over its substance is not tenable. Ample evidence has been shown that the LTJ applied the law correctly; Brodgen v Metropolitan Railway Co. (1877). The intention of the parties objectively assessed herein; in the light of their conduct and prior dealings point the court to the conclusion that the parties had a valid retainership contract. The court also holds that such a contract would require that the Respondent be given reasonable notice.

In view of the above, this court now Orders as follows:

1) This Appeal is wholly **DISMISSED.**
2) The Judgment of the Hon. Mr. Justice M. Bawoh J. dated the 14th day of February 2024 is **HEREBY UPHELD**.
3) The Respondent shall have the costs of this Appeal and those in respect of the proceedings in the lower court. Same to be taxed.

Signed: _____ 4/6/2026 (Presiding)

Hon. Mrs. Justice Fatmatta Bintu Alhadi JSC

I agree: _____ 4/6/2026

Hon. Mr. Justice Reginald Fynn J.A.

I agree: _____ 4/6/2026

Hon. Mrs. Justice Tonia Barnett J.A.