

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA

H.C.C.A. NO. 2/93

ORIG. CIVIL SUIT NO. 67/91-JINJA

JOSEPH OJEPA APPELLANT

VERSUS

DUNLOP EAST AFRICA LTD RESPONDENT

BEFORE: THE HONOURABLE JUSTICE C.M. KATO

J U D G M E N T

This is an appeal by the appellant Joseph Ojepa. The appeal is against the judgment of the Chief Magistrate sitting at Jinja dated 11-1-1993. The respondent is a company known as DUNLOP (EA)LTD.

The facts leading to this appeal are that the plaintiff (now the appellant) was employed by the respondent to work as sales manager from 20-12-1975 but by their letter of 19-9-90 and 22-9-91 the defendant/respondent requested the plaintiff/appellant to retire on the grounds of poor health and old age. Following these letters the defendant/respondent terminated the appellant's employment. The appellant brought this suit to recover his terminal benefits as a result of termination of his services, he also requested the court to award him medical expenses while ⁱⁿ Nairobi. The learned Chief magistrate awarded the plaintiff part of the amount claimed which included 3 months salary in lieu of notice, entertainment and car allowances, money for the days of earned leave and transport for the appellant's family to Soroti from Jinja, but she dismissed the claim for general damages and medical treatment. The appellant appealed against that judgment and gave four grounds for the appeal. The four grounds are as follows:

1. That the learned trial Chief magistrate misdirected herself and erred in law in disallowing claims of the appellant which had been conceded to by the respondent and thus occasioned a miscarriage of justice.

.... /2

In final conclusion I allow this appeal and partially set aside the judgment of the learned trial magistrate. The part of the judgment set aside is that which does not cover the claim for medical treatment in Nairobi; in other words the judgment of the learned trial magistrate remains valid in respect of those items which she awarded to the plaintiff/

appellant and where she dismissed the claim for general damages but it is to include expense on medical treatment amounting to 26,052/= (K shs) (That being the amount proved by the plaintiff)

Since both counsel did not address me on the other issues raised in the memorandum of appeal, it is reasonable to assume that those grounds of appeal with regard to general damages were abandoned by the appellant's counsel and even if they were not abandoned it is my view that the learned trial magistrate was justified in rejecting the claim of general damages since the plaintiff did not advance any satisfactory evidence to prove that his dismissal was unlawful.

In all these circumstances this appeal is allowed with costs, in respect to the special damages with regard to the expenses incurred by the appellant while attending medical treatment in Nairobi.

present case.

magistrate quoted in her judgment is not applicable to the of Pensions, (1947) 2 All ER 372 which the learned trial Mr. Masiga when he says that the case of: Miller v. Minister of Pensions (1947) 2 All ER 372 which the learned trial magistrate quoted in her judgment is not applicable to the present case.

say that the court below was not correct in dismissing the appellant's claim for special damages in respect of medical treatment outside Uganda. With due respect, I agree with Mr. Masiga when he says that the case of: Miller v. Minister of Pensions (1947) 2 All ER 372 which the learned trial magistrate quoted in her judgment is not applicable to the present case.

even produced receipts for his Hotel expenses and medical treatment while in Nairobi. It is for this reason that I say that the court below was not correct in dismissing the appellant's claim for special damages in respect of medical treatment outside Uganda. With due respect, I agree with Mr. Masiga when he says that the case of: Miller v. Minister of Pensions (1947) 2 All ER 372 which the learned trial magistrate quoted in her judgment is not applicable to the present case.

only be pleaded but must be proved: Kampala City Council v. V. Nakave (1972) EA 446. In my considered opinion special damages in respect of medical treatment were not only pleaded in this particular case but were proved by the appellant who even produced receipts for his Hotel expenses and medical treatment while in Nairobi. It is for this reason that I say that the court below was not correct in dismissing the appellant's claim for special damages in respect of medical treatment outside Uganda. With due respect, I agree with Mr. Masiga when he says that the case of: Miller v. Minister of Pensions (1947) 2 All ER 372 which the learned trial magistrate quoted in her judgment is not applicable to the present case.

It is true that under our law special damages must not only be pleaded but must be proved: Kampala City Council v. V. Nakave (1972) EA 446. In my considered opinion special damages in respect of medical treatment were not only pleaded in this particular case but were proved by the appellant who even produced receipts for his Hotel expenses and medical treatment while in Nairobi. It is for this reason that I say that the court below was not correct in dismissing the appellant's claim for special damages in respect of medical treatment outside Uganda. With due respect, I agree with Mr. Masiga when he says that the case of: Miller v. Minister of Pensions (1947) 2 All ER 372 which the learned trial magistrate quoted in her judgment is not applicable to the present case.

such a commitment to be put in writing. The defendant did not put forward any piece of evidence to show that this commitment by the General Manager to pay for appellant's medical treatment in Nairobi was not undertaken by the General manager Mr. Richard on the behalf of the company.

such a commitment to be put in writing. The defendant did not put forward any piece of evidence to show that this commitment by the General Manager to pay for appellant's medical treatment in Nairobi was not undertaken by the General manager Mr. Richard on the behalf of the company.

It is true that under our law special damages must not only be pleaded but must be proved: Kampala City council v. v. Nakaye (1972)EA 446. In my considered opinion special damages in respect of medical treatment were not only pleaded in this particular case but were proved by the appellant who even produced receipts for his Hotel expenses and medical treatment while in Nairobi. It is for this reason that I say that the court below was not correct in dismissing the appellant's claim for special damages in respect of medical treatment outside Uganda. With due respect, I agree with Mr. Masiga when he says that the case of: Miller v. Minister of Pensions, (1947)2 All ER 372 which the learned trial magistrate quoted in her judgment is not applicable to the present case.

In all these circumstances this appeal is allowed with costs, in respect to the special damages with regard to the expenses incurred by the appellant while attending medical treatment in Nairobi.

Since both counsel did not address me on the other issues raised in the memorandum of appeal, it is reasonable to assume that those grounds of appeal with regard to general damages were abandoned by the appellant's counsel and even if they were not abandoned it is my view that the learned trial magistrate was justified in rejecting the claim of general damages since the plaintiff did not advance any satisfactory evidence to prove that his dismissal was unlawful.

In final conclusion I allow this appeal and partially set aside the judgment of the learned trial magistrate. The part of the judgment set aside is that which does not cover the claim for medical treatment in Nairobi; in other words the judgment of the learned trial magistrate remains valid in respect of those items which she awarded to the plaintiff/appellant and where she dismissed the claim for general damages but it is to include expense on medical treatment amounting to 26,052/=(K shs) (That being the amount proved by the plaintiff)

or the equivalent of that amount in Uganda shillings at the Bank of Uganda rate at the time the judgment of the Chief magistrate was delivered which is 11-1-1993. The costs of this appeal and those in the court below shall be paid to the appellant by the respondent.

fid.
C. M. KATO

JUDGE

1-12-1995