

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**CIVIL SUIT NO. 95 OF 2012**

**AHMED EL**  
**TERMEWY**..... **PLAINTIFF**

**VERSUS**

**1. HASSAN AWDI**  
**2. ALI WADI**  
**3. ADVAN FANJAN REDHI**  
**4. AWDI SONIC (U)**  
**LTD** ..... **DEFENDANTS**

**BEFORE: THE HON. LADY JUSTICE ELIZABETH MUSOKE**

**JUDGMENT**

The plaintiff instituted this suit against the defendants jointly and severally seeking to recover special damages, general damages, aggravated damages, punitive damages, interest and costs of the suit for breach of his service contract, unpaid wages arising thereto, exploitation and infringement of rights under The Prevention of Trafficking in person's Act, 2009, the Employment Act No.6 of 2008, the Constitution of the Republic of Uganda, and breach of the plaintiff's service contract.

The plaintiff who is alleged to be a Lebanese national, was engaged by the 4<sup>th</sup> defendant as a manager pursuant to an

employment contract dated the 6<sup>th</sup> May 2011. He was hired from Beirut to work in Uganda and his emoluments were specified in the Board resolution for salaries of Lebanese nationals dated the 26<sup>th</sup> of September 2011, (**Exhibit P2**).

In their written statement of defense, the defendants denied any exploitation and or infringement of the plaintiff's statutory rights.

When the matter came up for hearing, the defendants could not be found by any reasonable means in Uganda thus the plaintiff applied for substituted service, which was allowed by this court and the defendants were served through the Daily Monitor News paper of 31<sup>st</sup> July 2014. The defendants still never entered appearance and thus the plaintiff was allowed to proceed exparte.

At the scheduling conference, it was an agreed fact that;

The plaintiff a Lebanese national was engaged by the 4<sup>th</sup> defendant as a manager pursuant to the employment contract dated the 6<sup>th</sup> May 2011 and the plaintiff's emoluments were specified in the board resolution for salaries of Lebanese nationals dated the 26<sup>th</sup> of September 2011.

The agreed issues for court's determination were that;

1. Whether the defendant breached the plaintiff's contract of employment.
2. What remedies are available to the parties.

At the hearing, the plaintiff was represented by Ms. Deepa Verma Jivram.

## **Resolution of issues.**

### **Issue 1**

The plaintiff in his witness statement stated that he was deceived by the defendants into coming in Uganda from Lebanon to work as a manager. When he got to Uganda, he was instead assigned different duties, amidst appalling and inhuman working conditions. His passport was also confiscated to deter him from travelling and when he chose to resign, he was denied his emoluments which had been stated to be 5% of the profit, that is to say, USD 500 per month since arrival in Uganda, starting October 1<sup>st</sup>, USD 850 starting January 1<sup>st</sup> 2012 and USD 1100 starting April 2012. He thus sought help from various offices including Ministry of Gender, labor and social development (**Exh P4**), Ministry of Internal affairs (**Exh P5**) and the Uganda Human Rights Commission (**Exh P6**). He contended that all these offices tried to amicably resolve the matter but the defendants snubbed all calls from these offices. He further stated that the defendants instead used the services of various security organs to harass him. A frivolous case was even reported to police and a criminal matter instituted which was abandoned after the plaintiff complained to the Director of Public Prosecution (**Exh P9**). It was then that the plaintiff decided to institute this suit.

Black's law dictionary 9<sup>th</sup> Edition page 213 defines breach of contract to mean;

***“Violation of a contractual obligation by failing to perform one's own promise, by repudiating it or by interfering with another party's performance”.***

The service partnership contract the plaintiff entered into with the 4<sup>th</sup> defendant provided that he was to be employed as a manager and was entitled to housing, transport, telecom and cost of living allowance around 400-700 USD per month depending on country expenses and experience. Further, the board decision, **Exhibit P2** provided that the plaintiff would be entitled to 5% of the profit, 500 dollars per month since arrival to Uganda, starting October 1<sup>st</sup> USD 850, and starting January 1<sup>st</sup> 2012 he would be entitled to USD1100. The plaintiff alleged that all the above provisions were not fulfilled by the defendant. The above was never challenged by the defendants as they never turned up for the hearing.

The court sees no reason to disbelieve the contentions of the plaintiff, who appeared to court to be a witness of truth.

Basing on the above evidence therefore, the 1<sup>st</sup> issue is answered in the affirmative.

## **Issue 2**

The plaintiff prayed for a declaration that he be declared a trafficked person under the Prevention of Trafficking in persons Act No.7 of 2009.

He contended that S.2 of the Prevention of Trafficking in Persons Act defined a victim of trafficking as a person who has been trafficked as per the definition of trafficking in persons provided for under the act. Section 2(r) of the same Act defines trafficking in persons as;

***“Trafficking in persons” means the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”***

The partnership contract, **Exhibit P1**, reads in part as follows;

***“This contract is made in order to define all the terms and conditions which are necessary for the employee to perform the work services for the company as function manager”***

The plaintiff in his witness statement stated that he was employed as a manager but when he reported to work, he was instead assigned different erratic duties to act as a marketer, imports manager, shop attendant and distributor. He was further accommodated in a ware house yet the partnership service contract he signed with the defendants provided that he would be provided with housing allowance.

From the definition of trafficking in persons given under the act (supra), I find that the plaintiff was a trafficked person as he entered into the partnership contract with the defendants under the belief that he was to act as a manager but it was not the case when he reported to work in Uganda. He was further deceived that he was to be provided with housing, transport and food allowance which according to his witness statement were never availed to him. He was therefore recruited through deceit and this qualifies him a trafficked person under the act.

The plaintiff further prayed for special damages to the tune of 3,566 \$ (Three Thousand, Five Hundred Sixty Six United states dollars), plus Ug. Shs. 2,999,000 (Two Million, Nine Hundred Ninety Nine Thousand shillings only). Counsel added that the above figure was arrived at by calculating the amounts outstanding from the plaintiff's contract of employment which are found in the written employment agreement and the board decision on salaries for Lebanese as 5% of the profit. He added that since the plaintiff arrived in Uganda in June 2011 and worked for the defendants till 20<sup>th</sup> January 2012, the plaintiff was entitled to special damages as follows;

Unpaid salary of USD 666.

Housing allowance of Ug.Shs. 750,000/=

Food allowance USD 300.

Sustenance allowance of Ug. Shs. 2,000,000/=

Overtime pay for eight months USD 1,000.

Transport allowance of Ug. Shs. 240,000/=

Repatriation fee of USD 700.

NSSF refunds of USD 900.

I find that the plaintiff is entitled to the amounts claimed except for the NSSF refund since it has not been proved that it was not remitted to NSSF. He is thus entitled to Ug. Shs. 2,999,000= and USD 2, 666.

The plaintiff further prayed for general damages to a tune of Ug. Shs. 30,000,000= (Thirty Million). Counsel submitted that general damages are those which will be presumed natural or probable consequence of the wrong complained of, with the result that the plaintiff is required only to assert that such damage has been suffered. He added that the defendants are guilty of dilatory conduct as they deceived the plaintiff, took him to another country miles away from home and subjected him to the appalling conditions. His passport was confiscated for a while thus infringing on his inalienable right to freedom.

The decision in ***Kampala District Land Board & George Mitala Vs Venansio Babweyana, Civil Appeal No. 2 of 2007*** is well settled law

on award of damages by a trial court. It is trite law that damages are the direct probable consequences of the act complained of. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. In the circumstances, court awards general damages to a tune of Ug. Shs. 20,000,000= (Twenty Million) for the physical inconvenience, pain and suffering.

Counsel prayed to be awarded punitive damages. Counsel relied on ***Obongo Vs Municipal council of Kisumu [1971] EA 91***, where court held that;

***“It is well established that when damages are at large and a court is making a general award, it may take into account factors such as malice or arrogance on the part of the defendant and this is regarded as increasing the injury suffered by the plaintiff, as, for example, by causing him humiliation or distress. Damages enhanced on account of such aggravation are regarded as still being essentially compensatory in nature. On the other hand, exemplary damages are completely outside the field of compensation and although the benefit goes to the person who was wronged, their object is entirely punitive”.***

Punitive or exemplary damages are an exception to the rule that damages generally are to compensate the injured person. These are awardable to punish, deter, express outrage of court at the defendant’s egregious, highhanded, malicious, vindictive, oppressive and/or malicious conduct. They are also awardable for



the improper interference by public officials with the rights of ordinary subjects.

Unlike general and aggravated damages, punitive damages focus on the defendant's misconduct and not the injury or loss suffered by the plaintiff. They are in the nature of a fine to appease the victim and discourage revenge and to warn society that similar conduct will always be an affront to society and also the court's sense of decency. They may also be awarded to prevent unjust enrichment. They are awardable with restraint and in exceptional cases, because punishment, ought, as much as possible, to be confined to criminal law and not the civil law of tort and contract.

In cases of breach of contract, breach of contract of employment inclusive, the position of the law has tended to be that punitive/exemplary damages are awardable in respect of a breach of contract, where the breach involves a tort in the course of or in relation to the breach. Thus in reality punitive/exemplary damages are awardable in respect of the tort and not the breach of contract per se. See ***Uganda Revenue Authority Vs Wanume David katamirike SCCA No.3 of 1993.***

After analysis of the facts in issue and the circumstances of the case, I find that the defendants' conduct towards the plaintiff was oppressive, more so basing on the fact that they personally recruited him and brought him to Uganda, a country totally

foreign to the plaintiff. I thus award punitive damages to a tune of Ug. Shs. 20,000,000= (Twenty Million) to deter the defendants and such other people from recruiting people from foreign countries and subjecting them to inhuman treatment and callous conditions once they reach Uganda.

In conclusion, the court makes the following awards;

- a) A declaration that the plaintiff is a trafficked person.
- b) Special damages to a tune of Ug.Shs. 2,999,000= and USD 2,666.
- c) General damages to a tune of Ug. Shs. 20,000,000= to the plaintiff.
- d) Punitive damages to a tune of Ug. Shs. 20,000,000= to the plaintiff.
- e) Interest on (b) to (d) above, at the court rate from the date of judgment till payment in full.
- f) Costs of the suit to the plaintiff.

**Elizabeth Musoke**

**JUDGE**

**30/01/2015**