IN THE SUPREME COURT OF

UGANDA

AT MENGO

(CORAM: ODOKI, CJ, TSEKOOKO, KAROKORA, MULENGA AND KENYEIHAMBA, JJSC.)

CIVIL APPEAL NO. 7 OF 2001

BETWEEN

KENGROW INDUSTRIES Ltd. :::::::::::::::::::::::: :::::::::::::::::::: APPELLANT

AND

C.C. CHANDRAN :: RESPONDENT

[Appeal from the decision of the Court of Appeal (Okello, Engwau and Twinomujuni, JJ.A) at Kampala, dated 5th January, 2001 in Court of Appeal Civil Appeal No. 12 of 2000].

JUDGMENT OF TSEKOOKO. JSC:

This appeal arises from the judgment of the Court of Appeal which upheld the decision of the High Court (Onega, J.), awarding damages to C.C. Chandran, the present respondent, because the appellant company, Kengrow Industries Ltd., wrongfully dismissed him from employment. The respondent was the plaintiff while the company was the defendant in the High Court. Herein after I shall refer to the appellant company as "the company".

The evidence adduced during the trial shows that by November 1996, the company had employed the respondent in India for 3 years. During that month, some of its

directors, namely, M. M. Patel, A. A. Andani and S. R. Shah, asked the respondent to visit Uganda and explore the possibility of his working for the company in their soap and oil factory in Uganda. The company and the respondent appear to have agreed that during the exploratory period, in Uganda, the company would pay to the respondent a monthly salary of

US$800 and also give him other benefits. The salary would be increased to $1050 (and not US 1150 as pleaded) if he accepted to continue working in Uganda and his family joined him. Pursuant to that agreement the respondent came to Uganda on 17/1/1997. His travel expenses were met by the company.

The respondent worked for the company under those agreed terms from 17/1/97 up to March, 1997. The management of the company consisting of M. M. Patel, A. A. Andani, S. R. Shah, Ashok Shah, Vyas, Ashok Agrawal and Joshi and the respondent held a meeting in the Sailing Club, in Jinja, and further discussed and finalised his terms of employment. The first three members of management, as already mentioned, had also been involved in the discussion in India in November before the respondent came to Uganda. It appears that following the final discussion in Jinja, the management of the company appointed the respondent as the General Manager of the company in Uganda. The company secured for him a work permit for a period of two years ending on 25th June, 1999.

According to the respondent, the terms and conditions of his employment, as agreed upon between him and management of the company, included employment for five years at a monthly salary of US$1050. The company was to pay for the air passage for the wife and two children of the respondent to come to Uganda to join him. He and his wife and children were also entitled to go on vacation every two years at the expense of the company. In Uganda, he was to be provided with a fully furnished house, the company paying rent, electricity and water charges. The company also agreed to pay the education expenses of his two children. In his evidence the respondent stated that because he had worked for the company in India before, and because of close relationship with the company, these terms were not reduced into writing. This assertion was neither challenged nor contradicted by any other evidence.

All the conditions were fulfilled from the time the agreement was hammered out in March 1997 till the beginning of March 1998. On 27/2/1998 the respondent went to Nairobi on company's business trip. Upon his return on 3/3/1998, he found some body else seated in his office. According to evidence proffered by the company through Midesh Shah, DW1, the new man called Radhamohen was appointed Chief Executive Officer and was so appointed at the behest of a Mr. Kamal, a majority shareholder in the company. The respondent had not been notified about this appointment. The respondent was unilaterally located to another office nearby where he performed some few petty jobs such as authorizing payment of medical treatment bills in respect of company workers. He also registered resolutions of the company. During that month of March, 1998, the respondent continued reporting to the company offices. House rent had been paid up to the end of May, 1998. The respondent continued to use the telephone which had been installed by the company in his residence till October 1998. The company asked the post office to disconnect the telephone in December, 1998. The company had stopped paying rent, electricity and telephone charges and expenses for the education of children. The company paid the respondent's salary up to April, 1998.

In the meantime, on 30/3/1998, the company held a party at Timtom Hotel, Jinja, where the respondent and his wife participated. During the party, Mr. Radhamohen, the new man, gave a speech. The respondent did not. The company did not give a dismissal order to the respondent but instead kept promising that the company would sort out his problems. According to the evidence of the respondent, the management of the company permitted the respondent to promote another company called Sankari Industries Ltd. which was incorporated on 22/4/1998. According the unchallenged evidence of the respondent, he was encouraged by M. M. Patel and A. A. Andani, two of the directors of the company, to promote that new company and run it on behalf of the company. Sankari Industires dealt in cotton seed cake, cotton seed, crude oil, maize, etc. Before that at some point in time the company stopped the respondent from continuing to report to office because he "was told not disturb the man on the chair". The respondent treated this as dismissal from the job. On the other hand Midesh Shah (DW1), contended that the respondent left on his own accord.

The respondent instituted a suit in the High Court against the company for breach of contract of employment and claimed, among other things, for salary at the rate of US$1150 per month, house rent, food allowance, children's school fees from May, 1998. In its written statement of defence, the company denied that it breached the contract and averred that the respondent left his employment voluntarily at the end of March, 1998 and that he was paid whatever was due to him. The company also counter-claimed for certain reliefs from the respondent.

At the beginning of the trial, five issues were framed, the first of which was whether the respondent was employed for five years and the second was, if so, what were the terms of the contract. The decisions of the Courts below on these two issues form the core of this appeal.

On the basis of the undisputed fact that the company got a work permit for the respondent for two years, the learned trial judge held that the parties intended that the contract of employment would last for at least two years. He therefore fixed the contract to be of two years duration and held further that that contract was breached by the company. He awarded the respondent salary "arrears" from 1st May, 1998 up to October 1999. This period included four months which apparently took care of the period when the respondent was waiting for judgment. The judge ordered payment to the respondent in respect of the other unpaid allowances namely food allowance, housing allowance and school fees and air tickets for himself, wife and two children. The judge also awarded shs. 5m/= as general damages for breach of contract of employment. He dismissed the company's counterclaim. The company appealed to the Court of Appeal which upheld the substantive conclusions of the trial judge but the Court of Appeal reduced the amount of salary, set aside the award for housing allowance, increased the award of school fees and also increased general damages from shs.5,000,000/= to shs. 14m/=. The increase of general damages was based on erroneous calculations in my view, but that is not an issue in this appeal. The Court of Appeal also increased the rate of interest payable on the decretal amount from 6% awarded by the trial judge to 20%. From that decision the appellant has come to this Court. The Memorandum of Appeal to this Court contains

five grounds. Dr. Joseph Byamugisha for the Appellant argued ground one separately, and in two batches but argued the rest of the grounds (2 to 4) together.

The first ground, as formulated, states that the Court of Appeal erred in law in failing to evaluate the evidence on record and subjecting it to fresh and exhaustive scrutiny hence coming to the erroneous conclusion that:

(a) **The respondent was entitled to a salary of USD 1150 not USD 1050 per month.**

(b) **The respondent did not voluntarily leave the appellant's employment.**

(c) **The "full and final settlement" that the Respondent acknowledges receiving was only payment up to that period ending April, 1998.**

(d) **The party organized was not the respondent's farewell party because he did not make a speech and there were no invitation cards.**

(e) **There was breach of contract on the part of the appellant.**

Submitting in respect of paragraph (a) of Ground 1, Dr. Byamugisha contended that the Court of Appeal erred when it held that the amount of salary was not an issue because at the trial, issue number 2 was about the terms of the contract of employment and salary is one of such terms of that contract. Mr. Muziransa, Counsel for the Respondent, contended generally that ground 1 contravened Rule 29(1) of the Rules of the Court which does not allow appeals to this Court on facts and that we should not evaluate evidence in this case. He cited **Milly Masembe vs. Surgar Corpn. Ltd.** Sup. Court Civ. Appeal 1 of 2000 (unreported). Counsel, who had initially maintained that salary for the respondent had been fixed at US$ 1150, relented when his attention was drawn to the contents of the ledger sheet which showed that in fact the respondent had been receiving US$ 1050 as salary and for which he had signed. Mr. Muziransa therefore accepted US$ 1050 as the salary agreed upon.

Let me dispose of Mr. Muziransa contention that we are barred from re-evaluation of evidence because of the provisions of Rule 29(1) of the Rules of the Court. Sub-rule (1) of Rule 29 really bars this Court from receiving additional evidence in cases of second appeals but does not bar this Court from re-evaluation of evidence.

It is my view, in any case, that in an appeal where a complaint is based on mixed law and fact, even if we are not bound to re-evaluate the evidence, in order to decide the complaint concerned, in the process of considering the complaint we evaluate evidence. This is especially so in view of the unrestricted right of appeal conferred on appellants in civil appeals by S.7 of the Judicature Statute, 1996.

Now, issues are normally framed on the basis of pleadings and those issues are eventually determined on the basis of evidence. In paragraph 5(ii) of the plaint, the respondent had pleaded that the agreed monthly salary was US$ 1150. In reply in its written statement of defence, the company denied this. Therefore at the trial the terms of the contract became an issue and that issue was framed as issue No. 2. In relation to that issue, the respondent testified about his salary and during cross-examination he was shown the ledger card (exh.D1) which indicated that the company was paying him salary at the rate of US$ 1050 monthly and that the respondent signed at the end of the ledger sheet where it was stated that:

"That account of salary and other expenses stated above are correct for full and final settlement."

In his evidence the respondent testified that the amount recorded on the statement was:

"For salary and other benefits they gave me from October, 1997 to March 1998".

In these circumstances, therefore, Mr. Muziransa quite properly conceded that the agreed salary was in fact US$ 1050. I think therefore that the trial judge and the Court of Appeal misdirected themselves on the pleadings and on the evidence when they held that the salary was not in issue. I think that ground 1(a) of the memorandum of appeal should succeed.

Dr. Byamugisha argued paragraphs (b) to (e) of ground (1) together and first posed three questions as follows:

(i) Did the Respondent leave the service of the company voluntarily?

(ii) Was the contract of service terminated? and

(iii) Did the contract continue up to the date of judgment?

These questions are different aspects of the same issue. The contention of Dr. Byamugisha is that the respondent left the company voluntarily and thereafter promoted and set up another company called Sankari Industries Ltd. He contended that the Courts below erred when they held that the respondent remained in the employment of the company after the end of March, 1998 whereas in his evidence in Court the respondent claimed that he was dismissed. Counsel argued that the party held on 30/3/1998 and salary payment marked the end of the respondent's employment. In Counsel's view, the trial Court should have held that the contract was terminated at the end of April 1998. Counsel also argued that since the respondent had stopped to be an employee of the company, the Courts below should have awarded damages, and not salary arrears, to the respondent. In reply, on ground 1(b) to (e), Mr. Muziransa submitted that the company did not adduce evidence proving that the respondent voluntarily left the company service. In his view the evidence of Medish Shah (DW1) supports the view that the Respondent remained an employee of the company. On the contents of the ledger card account (exh D2), Mr. Muziransa supported the finding of the trial judge that the card reflects payment for the period worked as at the end of March, 1998. He further contended that payment of salary for April 1998 was normal salary payment and not payment in lieu of notice. I think that on the last point Mr. Muziransa failed to appreciate the evidence of Mr. Midesh on the purpose for the April payment. Mr. Midesh said in evidence that the pay was in lieu of one month's leave. In reference to the document (exh.D2), and the duration of the contract, learned counsel supported the finding by the High Court, which finding was upheld by the Court of Appeal, that the contract was to last at least two years because under the provisions of the Immigration Act and Regulations made thereunder, permits for expatriates are given to cover the employment period, and as in this case, the respondent was such expatriate employee of the company, the work permit for two years meant that the contract would last two years.

The learned trial judge dealt with these matters this way:-

> *The question then is was there any breach of contract and if so by whom? There is evidence on record to show that on 3/3/98 when the plaintiff returned from Nairobi where he had been on a business trip on behalf of the defendant he found someone else seated in his office. When he inquired he was told to be patient and that matters would be sorted out. According to the defendant a new employee had been brought to occupy a new post of Chief Executive. The defendant says the plaintiff was relocated to another office from where he continued to work. But the plaintiff clearly tells court that from 3/3/98 when someone was put in his office he kept reporting for work but to no avail till he was eventually told to stop disturbing. The company then processed and paid him all that was due to him up to the end of March 1998 and even paid him for the ... month of April 1998. According to the defendant the plaintiff voluntarily left the defendant's employment at the end of March 1998. Yet they allowed him to continue occupying the company house up to May 1998 and did not ask post office to disconnect the telephone till December 1998. Here I must say that considering all that happened the plaintiff did not voluntarily leave the defendant. If he was to voluntarily leave the defendant and therefore breach the contract of employment the defendant would not have felt obliged to give him one extra month's salary in the April 1998. Secondly the defendant would not have left him to continue staying in their house with all the facilities for electricity, water and telephone. The plaintiff has not exaggerated any of the terms of the contract and if indeed he was not stopped from working when he returned from Nairobi there would have been no reason for him to leave the job he had come for Counsel have talked about the pay the plaintiff received "in full and final settlement". On this I tend to agree with the plaintiff's explanation that that was payment in full and final settlement for the period he was paid for. There is*

nothing on record to show that the plaintiff told the defendant he wanted to leave their job and there is also nothing on record to show that the defendant formally terminated the plaintiffs services and gave him due notice. In my view the plaintiff was left in the dark and he was entitled to and was right to receive that payment which was due to him. That should not be used as estoppel to bar him from any further claims particularly as he was left in the dark hoping hat the matter would be sorted out and he would get back to his employment. Further more the extra pay for the month of April cannot be said to have been made in lieu of notice when that was not brought to the attention of the plaintiff. The plaintiff was entitled to be informed if that was to be payment in lieu of notice and that would have been indicated in the final account just like payment for the other items have been indicated. To me it looks like the plaintiff was paid for the extra month and left in the company's house with all the facilities because the defendant knew they had rendered the plaintiff redundant and wanted to comfort him as he waited for his fate. In this way I find that the defendant was all in all in breach of the contract between themselves and the plaintiff who up to now is waiting to hear from the defendants about his fate".

The judge accepted the respondent's evidence that some of the directors of the company are the ones who encouraged him to set up Sankari Industries Ltd. which he managed on their behalf. The learned judge did not believe the company's evidence that the company organized a farewell party for the respondent.

In his lead judgment Twinomujuni, JA, dealt with the issue of duration of contract in these words:

"Whether the contract of employment terminated in March, 1998 depends on whether the version of the appellant that the respondent voluntary accepted the termination of his contract. On the evidence on record, the learned trial judge rejected that version and I do not

see how that finding can be faulted. There is overwhelming evidence that the respondent was thrown out of office without any notice at all and was never told of his fate up to the time of judgment in court which was delivered in his favour. I agree with this finding and hold that the respondent contract of employment was not terminated in March, 1998.

Since the contract was never terminated during its life time, it must be deemed to have come to the end when its duration expired There is no serious dispute on either side against the finding of the trial court that the contract was to last ***for "at least"*** *two years ending on 26/6/1999-------- I would hold that the respondent's contract of employment came to an end on 25/6/1999".*

Dr. Byamugisha criticised the conclusions contained in the above passage.

The two passages, the first from the judgment of the trial judge and the second from the lead judgment of Twinomujuni, JA, answer the three questions posed by Dr. Byamugisha. The passage which I have underlined does answer the first question that the respondent did not leave employment voluntarily. The evidence of Midesh Shah (DW1) shows that during the temporary absence of the respondent, another person took over his office. Upon his return, the respondent was made to do petty jobs for the company until he was told not to disturb the new man. This was not challenged by any other evidence. Further, according to the respondent, he was told that the company would look into his problem which means the company just left the respondent in suspense but was still responsible for him. If the respondent had left voluntarily why did the company not have company telephone disconnected immediately he stopped working for the company? Apparently, the respondent used the company telephone in his residence till October, 1998. Indeed, according to Midesh Shah (DW1) the company only caused the telephone to be disconnected in December, 1998, a period of nine months after the respondent is alleged to have abandoned work.

On the duration of the contract, the trial judge had before him only the unchallenged and uncontradicted version of the respondent that the contract was to last five years.

Midesh Shah (DW1), the key witness for the company, did not know the life of the contract. Curiously and for no known reason or explanation, none of the members of the management of the company who negotiated the terms of employment for the respondent testified in court. In that regard except for the work permit, there was therefore only the respondent's unchallenged evidence. On the authority of E.A. Airways vs Knight (1975) EA 165; Kyobe vs. E.A. Airway (1972) EA 403 and G. Ushillan: vs. Kampala Phamarceutical Ltd. SC Civil Appeal No.6 of 1998 reported in (1999) SCD, Page 84, there would have been nothing to prevent the judge from holding that the contract was for 5 years. The learned trial judge should have accepted the evidence of the respondent in the absence of any other to the contrary.

Be that as it may, I think that the judge acted judicially when he read into the duration of the work permit as an indication on the part of the company and the respondent that the respondent would be employed for at least two years. In my view the Court of Appeal was justified in upholding the decision of the trial court on the duration of the contract. Indeed, I also accept the unchallenged evidence of the respondent that he was permitted by some of the members of the management of the company to run Sankari Industries Ltd. on behalf of the company. The contrary view by Mr. Midesh is unconvincing. Mr. Midesh was just a Chief Accountant, an employee of the company. He was not one of the members of the management. He did not give facts why he thinks that Sankari Industries Ltd. belongs to the respondent.

I am not persuaded that the party held in Timton Hotel was a farewell party for the respondent. It is more reasonable to say that the party was a welcome party for the new Chief Executive Officer since he is the only one who made a speech. I am not satisfied that the respondent participated in the party as the guest of honour leaving the company rather than as any other member of staff. Therefore I don't regard the holding of the party as marking the end of the contract of the respondent.

As regards salary payment, if payment in April, 1998, be regarded as payment in lieu of notice, the vouchers Exh.D2 and Exh.D3 do not describe it as the end of contract payment. In fact Midesh said at the start of cross-examination that when he

"Paid the respondent the contract had not ended. The money paid was to cover the period up to 31/3/1998".

Half way through his evidence, the same Midesh who did not know how long the employment contract of the respondent was to last, claimed that the payment effected on the 11th April and 18th April were payments in lieu of leave. He said:

"We paid him 1 month in lieu of leave".

It appears that for each payment there is endorsed the words "in full and final settlement". These words appear on the ledger card exh.D1. They also appear on other documents (exh.D2 and D3) for payment for the month of April, 1998. This gives me the impression that the words "full and final settlement" are used indiscriminately. In any case Midesh, as a witness, does not appear to me to have been consistent in his testimony. This is because earlier in his testimony, the witness had claimed that the respondent:

"Was not given air ticket because he did not want to go to India. Besides we would have given him if he had completed his contract. In this case he did not complete hiscontract."

This is evidence of a witness who did not know the terms and duration of the contract and yet he turned round and claimed that the respondent was denied air ticket because he did not complete his contract. This witness could not say all this because he did not know the terms of the contract which was not in writing. Members of the management of the company should have testified about this.

To prove the inconsistency of Midesh, during cross-examination Midesh turned round and stated: -

"We paid only whatever was due to him. We are willing to give him Air tickets with his family if he wants. We offered him so many

times. He is not entitled to his full benefits to date. Since the payment we made Mr Chandran has never come to me to ask for further payments."

Clearly, this witness was either confused or did not know what he was talking about and therefore in my view his opinions or evidence cannot form a basis for the view that the contract of the respondent ended on 31/3/1998; nor that the respondent left the company employment voluntarily. Nor, indeed, can I rely on this witness for the view that the party which was held on 30/3/1998 was a farewell party for the respondent.

In the result paragraphs (b) to (e) of ground 1 ought to fail.

Dr. Byamugisha made an alternative submission that we should hold that if the respondent did not leave the job voluntarily, he was sacked at the end of March, 1998. Of course the company as employers, like any other employer, had an inherent right to terminate the services of the respondent but only in a lawful way. The evidence available does not suggest that the respondent was sacked at the end of March, 1998. The company simply allowed the situation to drift on unresolved. The company first denied him office and eventually he considered himself to have been dismissed because he did not have anything to do.

Next, Dr. Byamugisha argued grounds 2, 3 and 4 together. These grounds are framed as follows: -

2. **The Court of Appeal erred in law in awarding damages for breach of contract when interest was awarded.**

3. **The Court of appeal erred in law in increasing damages to shs.14,000,000/= from shs.5,000,000/= when there was no cross appeal.**

4. **The Court of Appeal erred in law in reviewing the interest from 6% to 20% without any cross appeal having been preferred by the Respondent nor any prayer having been made to the Court of Appeal by counsel for the Respondent to that effect and in ignoring that the amount was evaluated in US Dollars.**

Dr. Byamugisha for the company while arguing ground 2 cited our decision in **G. Ushillani vs. Kampala Pharmaceuticals** - Sup. Ct. Civil Appeal 6 of 1998 reported at page 84 of vol (1999), SC.D, Civil, for the view that the contract between the company and the respondent is of its own kind in that the contract did not contain fixed terms of employment nor was it the type where the respondent was employed for a fixed period without terms of employment being spelt out. He therefore contended that the trial court erred when it held that the contract between the company and the respondent was expected to last at least two years. Learned counsel argued that because of the provisions of subsections (1) and (3) of S 24 of the Employment Decree, 1975, the respondent should have been given 15 days notice of termination of service but the company paid him salary for one month instead of giving him such notice.

Although Mr. Muziransi suggested that ground 2 had been abandoned, he in fact replied to Dr. Byamugisha's argument because learned counsel supported the decision of the two courts below to the effect that the contract was to last at least two years. He contended that there was an oral contract and that under the provisions of the Immigration Act and the Immigration Rules, work permits are given to cover a period of employment. That the respondent was employed as an expatriate from India and the company secured him a work permit for 2 years. Counsel also supported the awards of damages.

I have already considered some aspects of this ground. Although ground two complains about award of damages by the Court of Appeal, counsel's criticisms were concentrated on the trial court findings. I find ground 2 confusing. The confusion was increased because of the approach adopted by arguing that ground. I will consider the ground on the basis that the complaint is against the award of damages by the trial judge which damages were principally upheld by the Court of Appeal.

The various people who the respondent named as members of the management of the company are knowledgeable, or ought to have been knowledgeable, about the

terms upon which the respondent was employed. As I have already stated, none of them gave evidence at the trial. No explanation was given why. It is obvious that Mr. Midesh who testified as a key witness for the company did not know the terms of employment upon which the respondent was employed. Mr. Tuyiringire who represented the company at the trial merely submitted, from the bar, that the respondent did not have a contract of five years duration. That clearly was not evidence.

It is only the respondent who testified about the contract and its terms of his employment. In these circumstances both the trial judge and Court of Appeal had no alternative but to accept the version of the contract terms as given by the respondent. Going by that version, the trial judge considered the submissions of both sides before he decided that the contract was to last two years. The Court of Appeal considered the evidence, the judgment of the trial judge and the address by both counsel before it (Court of Appeal) accepted the conclusions of the trial judge. It was up to the company to have specifically spelt out the terms of the respondent in writing. They failed to do so. So they are bound.

Dr. Byamugisha contended that the present case has no similarities to the **Ushillani case** (supra) and therefore he submitted that the respondent in this case was entitled to only a notice for 15 days under the provisions of S.24 of the Employment Decree and not to damages. The lead judgment in **Ushillani case** was that of my brother Mulenga, JSC. After discussing the implication of S.16 of the Employment Decree, in so far as the section relates to the period for which the contract was binding, the learned Justice of the Supreme Court stated this:-

> *"Where a contract of employment is repudiated by the employer through dismissal of an employee, even in a case of employment for a fixed period, the employee cannot insist on continuing to be provided with work and payment. If the dismissal, be it express, implied or even constructive, is unequivocal, then the only remedy available to the wronged employee is damages. The issue that remains to be decided therefore is the measure of damages, to which I now turn.*

In deciding that issue, the Court of Appeal appreciated that the employment in the instant case, was for a fixed period. The court made distinction between a contract which makes no provision for termination prior to expiry of the fixed period, and one in which there is a provision enabling either party to terminate the employment. The learned Justices stated the law to be that in the event of wrongful termination by the employer, the employee in the former contract would be entitled to recover as damages, the equivalent of remuneration for the balance of the contract period, whereas in the latter case the wronged employee would be entitled to recover as damages, the equivalent of remuneration for the period stipulated in the contact for notice I respectfully agree that this is the correct statement of the law. I would add that it is premised on the principle of restitutio in integrum. Damages are intended to restore the wronged party into the position he would have been in if there had been no breach of contract. Thus, in the case of employment for a fixed period which is not terminable, if there is no wrongful termination, the employee would serve the full period and receive the full remuneration for it. And in the case of the contract terminable on notice, if the termination provision is complied with, the employee would serve the stipulated notice period and receive remuneration for that period, or would be paid in lieu of the notice". (underlining supplied).

I think that above underlined passage covers this appeal. In my view both the trial judge and the Court of Appeal applied this principle when they awarded damages to the respondent and I have not been persuaded that, apart from error in calculation, the two courts erred in their respective conclusions.

Moreover, I do not accept the contention by Dr. Byamugisha that the respondent was given pay for one month in lieu of notice. The evidence of Midesh (DW1) is that the one-month pay was in lieu of leave and this appears to be the finding of the trial judge. Therefore the respondent was not paid anything instead of notice. In any case there is no evidence to show the notice which could have been given before termination.

The complaints under this head were summarised at page 59 by Twinomujuni, JA, as follows:-

(a) Arrears of salary for 14 months @ $ 1150 = $ 16,100/=.

(b) No rent award.

(c) Food Allowance shs. 167,000/= for 15 months = 2,505,000/=.

(d) Fees of 120,000/= for three terms for two children = 720,000/=.

(e) Air ticket for respondent because that of wife and children had been provided.

As Dr. Byamugisha himself admitted that the contract under which the respondent served was peculiar in its own way. The respondent was specifically brought from India to work for the company under the conditions and terms found by the trial judge and upheld by the Court of Appeal. Even if it is accepted that the company dismissed the respondent at the end of March, 1998 pay of one month in the circumstances of this case would be hopelessly unjust to a man who had been uprooted with his entire family from India onto Uganda soil. He was kept guessing as he was told that his problem would be solved. In such circumstances he would be entitled to a very reasonable notice which in my view could have been not less than 6 months in addition to the rest of the benefits. This would enable him to settle down and look for suitable alternative employment. In case of claim for damages for breach of contract of employment the measure of damages must have regard to the time which might reasonably be expected to lapse before he would, in the ordinary course of things, be likely to obtain similar employment to that which he lost by his wrongful dismissal. Having fixed that period he should be given a sufficient sum to reimburse him for the loss he sustained, calculated on the basis of the emoluments he was enjoying at the time of such loss: Witu vs Peake (1913/14) 5 EALR 17.

Moreover, it is trite that in an action for wrongful dismissal, once a plaintiff has proved that he was dismissed from his employment with notice, or indeed without the notice provided for in his contract of employment, the onus is on the defendant to establish misconduct which justified the dismissal: Bosa vs High Commission (1950) 17 EACA 42. So drastic a step of dismissal by an employer is normally not justified unless the conduct of the employee has shown a deliberate intention to

disregard the essential requirements of a contract of service: Laws vs London Chronicle (1959) 2 ALLER 285 and (Pepper vs. Webb) 2 ALLER 216.

It is also trite law that a person who is wrongfully dismissed should mitigate his damages by obtaining alternative employment. By agreeing to promote Kantari Industries Ltd., on behalf of company, the Respondent attempted, to mitigate his damages and this is in effect what he said and the trial judge accepted this when he said that the respondent had to do something to survive.

In the circumstances of this case my view is that the respondent is entitled to payment for the residue of the contract which is 12 months from 1/5/1998 to 30/4/1999 = $12600. The extra four months added by the Courts below is not justified.

This ground ought to fail in part in that I would award the respondent salary for the residue of the contract which is 12 months at the rate of $1050 = $12600. The rest of the items except for education expenses are to be reduced proportionately.

On ground three of the Memorandum of Appeal, I agree that the respondent did not cross appeal against the award to him of shs 5m/- as general damages. And when Mr. Muziransa asked the Court of Appeal to increase these damages, Mr. Mukasa - Sebugenyi Counsel for the company justifiably resisted this on grounds, inter alia, that there was no cross appeal to justify this. Mr. Muziransa suggests that this was a question of discretion. In my view no such discretion exists. Moreover by virtue of Rules 90 (1) of the Court of Appeal Rules, 1996,

> **"A respondent who desires to contend at the hearing of the appeal in the Court, that the decision of the High Court or any part of it should be varied or reversed, either in any event or on the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of his or her contention and the nature of the order which he or she proposes to ask the Court to make, or to make in that event as the case may be".**

Clearly, and with great respect, the Court of Appeal should not have entertained arguments about increase of general damages as this Rule had not been complied with. It is not correct to say, as did the Court below, say, that the evaluation of the evidence by itself entitled that court to increase damages. It follows that the increase ought to be set aside which increase in any case should not, in view of the award of salary, have been increased. With respect I think that the basis upon which the increase was made is not supported by authority. So ground three should succeed.

The fourth ground argued is about increased rate of interest from 6% to 20%. Dr. Byamugisha made arguments similar to those advanced when he argued ground 3 on damages and contended that there was no cross-appeal in the Court of Appeal to the effect that interest was low. Nor did the respondent produce evidence regarding what interest should be awarded so as to justify interference with the award made by the trial judge. Mr. Muziransa supported the decision of the Court of Appeal contending that interest was a form of compensation.

Clearly, the order of the Court of Appeal failed to take Rule 90 (supra) into account. I agree that where a trial judge exercises discretion to award interest on damages, the appellate court ought not to interfere with that award unless it is satisfied on evidence which not only proves justification for interference but also evidence which proves a relevant rate which ought to have been given. In this case the Court of Appeal referred to **"ruling Commercial rate".** Unfortunately no evidence was produced to show the "ruling commercial rate" which would justify the conclusion of the Court of Appeal. I would therefore allow this ground and restore the rate given by the trial judge.

Ground five was not argued. So it should fail.

In the result and for the foregoing reasons this appeal should succeed substantially.

1. I would order that the respondent be paid US $ 12600 being salary for the balance of the contract of employment, namely twelve months.

2. I would award food allowance for 12 months x shs. 167,000/= per month equals shs.2,004,000/=.

3. I would uphold the award for education expenses at shs.720,000/=.

4. I would set aside the order of Court of Appeal increasing damages from shs. 5m/= to 14 m/=. Instead I would restore the order of the High Court awarding shs. 5m/= as damages.

5. Also I would set aside the order of the Court of Appeal increasing the rate of interest from 6% to 20% and I would restore the order of the trial judge, namely the interest be at the rate of 6%. Per annum.

6. I would order that the respondent get half of his costs in the Court of Appeal.

In view of the orders I have proposed above which show that the company has got substantial success, I would order that the respondent be paid half his costs here and in the Court of Appeal. I would order that he be paid his full cost in the High Court.

JUDGMENT OF ODOKI, CJ.

I have had the benefit of reading in draft the judgment of Tsekooko JSC and I agree with it.

The two lower courts were justified in coming to the conclusion that the contract period for the respondent's employment was at least two years. The Courts were also entitled to hold that the respondent was dismissed before his contract period expired, and that the dismissal was unlawful since there were no grounds advanced to justify the dismissal. The contention by the appellant that the respondent voluntarily abandoned his duties was not supported by evidence, but on the contrary the conduct of the appellant showed that the respondent's services were not required as he was in effect replaced by a new Chief Executive Officer.

Since the respondent was unlawfully dismissed, there was a breach of his contract of employment giving rise to a claim for damages. I agree with Tsekooko JSC that the respondent should have been paid for the remaining term of his contract all the remuneration due to him, including salary and benefits. The respondent is also entitled to general damages for breach of contract. I agree with the awards of damages and the amounts proposed by Tsekooko JSC.

I agree that Court of Appeal erred in increasing the award of damages and the rate of interest when there was no cross-appeal. The Court was not justified in so acting on the grounds that no reasons had been given by the trial Court to award the amount of damages he awarded or that the plaint had prayed for a higher rate of interest.

I concur in the orders as to costs, as proposed by Tsekooko JSC.

As other members of the Court agree with the judgment and orders proposed by Tsekooko JSC, there will be an order in the terms proposed by Tsekooko

JSC.

JUDGMENT OF KAROKORA, JSC.

I have had the benefit of reading in draft the judgment prepared by Tsekooko, JSC and I agree with him that the appeal should substantially succeed. I would adopt the orders he has proposed.

In the result, I find that I cannot usefully add anything.

JUDGMENT OF MULENGA JSC

I had advantage of reading in draft, the judgment of Tsekooko JSC. I agree that the appeal ought to succeed in part, and I concur with the orders he has proposed.

JUDGMENT OF KANYEIHAMBA, J.S.C.

I have read in draft, the judgment of my learned brother. Tsekooko, J.S.C, and I agree with him that this Appeal should partly succeed and I agree with the orders he has proposed.

Delivered at Mengo this 22nd Day of April 2002

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