THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CORAM: HON. MR. JUSTICE S.T. MANYINDO,DCJ; HON. LADY JUSTICE MPAGI BAHIGEINE,JA; HON. MR. JUSTICE J.P. BERKO,JA.

CIVIL APPEAL NO.49/97

KAMPALA PHARMACEUTICALS…… APPELLANT

VERSUS

GULLABALLI USHALAN. I…… RESPONDENT

JUDGMENT OF THE COURT

This is an appeal challenging the amount of general damages awarded by the learned Principal Judge in a suit for wrongful dismissal and breach of contract of employment instituted by the Respondent against the Appellant.

The background is as follows:

On or about the 1st January 1991 the Respondent/Plaintiff Gullaballi Ushalani entered into a written contract of employment with the Appellant/Defendant for a fixed period of five (5) years but with effect from 4/12/91 till 3/12/96.

The Respondent was appointed to work as a Quantity Control Manager during the said period. Her emoluments were to be as follows:

(a) a salary of Shs.200,000/= p.m.

(b) an averseas's allowance of U$.2,000= p.m.

She was also to be entitled to other usual fringe benefits not the subject of this appeal.
Out of the five years stipulated in their written contract, the Respondent worked for only nine (9) months for which she was paid and after which the appellant made it impossible for her to work. Her employer persuaded her to take her overseas leave between January and February 1992. On her return she found the company had changed its name from Inlex Pharmaceuticals Ltd. to that of Kampala Pharmaceuticals Ltd. on 13/3/92. The new company neither assigned her work nor did it terminate her contract. She contended that she could not herself terminate it for fear of losing her benefits. In her view the contract subsisted till the end of the five (5) years even though she was not being assigned any work.
She filed this suit on 14th May, 1993 claiming general damages for breach of contract, all emoluments due until the end of the contract period, together with costs of the suit.
The learned Principal Judge found for the respondent and ordered the appellant to pay the respondent the following damages:

(a) Shs.1O, 200,000= special damages for loss of her salary for 51 months;
(b) U$102,000 for loss of her expatriate allowance over the period of 51 months;
(c) Shs.4.900, 000= general damages.

The memorandum of appeal comprises three grounds:

(1) That the learned trial Judge erred both in law and fact when he awarded a sum of Shs.10, 200,000= as special damages for a period of 51 months and a sum of US$102,000 for loss of expatriate allowance for a period of over 51 months without taking into account the fact that the respondent could nave mitigated her damages and/or loss.
2) That the learned trial Judge erred in awarding the respondent both special damages and loss of expatriate allowance basing the calculations on a period of 51 months instead of 6 months which was the stipulated period of notice under the contract of employment.
(3) That the learned trial Judge erred in law by awarding a sum of Shs.l0,200,000= as special damages for loss of salary for 51 months and a sum of US$102,000 for loss of expatriate allowance for 51 months without subjecting such awards to taxation in accordance with the laws of Uganda in that regard.

The three grounds were argued together on appeal.
Mr. Bitangaro Counsel for the appellant conceded that the contract of employment was terminated by the Appellant and that no notice of termination was even given to the Respondent. He however faulted the learned trial Judge for misconstruing Clause 8 of the Contract. This provides:

"8…..The Production and Quality Control Manager's employment hereunder may be determined at any time by either of the parties hereto giving to the other of them six month's written notice to that effect or by the company paying her in addition to any salary or commission that may be due to her a sum equivalent to six month's salary in lieu of such notice."
He submitted that the Respondent was entitled to only six month's salary and that the Judge erred in using a multiplier of 51 months. By using a 6 months multiplier he ought to have made the following awards:

Expatriate allowance US$2,000 x 6 = US$12,000= and Salary shs.200,000 x 6 = 1,200,000=.
He further argued that the learned Judge failed to take into account mitigating circumstances. The respondent being a highly qualified person could have terminated the contract herself and opted for alternative employment elsewhere. He contended the special damages awarded by the Judge were not proved.
He pointed out the general damages awarded by the Judge were excessive and the learned Judge gave no reason for awarding them. He suggested a figure of Shs.2m. would be adequate though he offered no authority for such a figure.
Mr. Yese Mugenyi for the respondent justified the awards on the ground that the contract was never terminated. He argued that it remained effective throughout though she was not being assigned work. The new management continued paying her hotel bills and car allowance. She was paid the salary for nine months. She also kept the car until May, 1994 when she filed the suit. He stated that the respondent could not terminate the contract herself for fear of losing her benefits. He submitted by awarding her 51 months' compensation the learned trial Judge was fully compensating her under the contract.

While awarding special damages, the learned Principal Judge observed inter alia

“It has also been proved that the plaintiff worked for the defendant and was paid for 9 months whereas her contract of employment was to last for 5 years. This means that she has to recover her salary and allowances in respect of 4 years and 3 months (i.e. 51 months) …….”

We agree with the learned Principal Judge that it is settled law that where the parties to a contract stipulate that the contract is to continue for a definite period, the contract cannot be terminated before the expiry of that period: See **SOUTHERN HIGHLAND TOBACCO UNION LIMITED vs. DAVID MCQUEEN (1960) EA 490**

Where the agreement was for a specific term with an express provision that the appellant could not be dismissed before the expiration of the agreed term. When the appellant sued for wrongful dismissal in breach of the said agreement, he was awarded damages representing the remainder of the term. It is therefore clear that a contract of employment for a definite period can only be terminated before the expiry of that period if the parties are so empowered by the terms of the contract. It is all a matter of construction of the words used in the contract.

If a contract expressly specifies that either party to the contract may determine it by notice, this contract presents no problem at all: **LATCHFORD PREMIER GUEME LIMITED V ENNION (1931) CH.409.**

In the instant case Clause 8 stipulates that a six months notice is to be given in writing by either party desirous of terminating the contract. This means that the employer may choose to discharge the employee and pay the agreed salary for the time of notice or discharge the employee and risk suit for the recovery of the amount of salary for the time of the required notice. The recovery is limited to the notice period. This is the most important aspect of this case. We do consider this is the approach the learned Principal Judge should have adopted. A multiplier of six months should have been used to award the special damages. We should also point out or reiterate that the term “special damages” connotes damages arising from the special circumstances of the case and by competent evidence directly traceable to failure to discharge a contractual obligation. We

therefore agree with Counsel for the appellant that the learned Principal Judge should have awarded only:
(a) Salary for six months i.e. Shs.200, 000=
(b) Overseas allowance for six months i.e. US$12,000.

Next it is well to consider the question of general damages which was raised by Mr. Bitangaro though not mentioned in the memorandum. It is a question of law. He argued the figure of Shs.4.9 million awarded as a general damage was too excessive and without basis in the circumstances.
Mr. Mugenyi pointed out that by giving the respondent 51 months compensation, the learned Judge was fully compensating her. There was no evidence she could get alternative employment in which case she could not mitigate her circumstances for the whole period of 5 years. When considering the question of general damages, the learned Principal Judge observed inter alia:
…….I have already observed that the plaintiff could have terminated the contract of her employment by giving a 6 months' written notice to the employers. However even if she had taken that course of action, she was a stranger in a strange land. There is no guarantee that the employer would have made payment to her of terminal benefit, judging from the obstinacy the employer has exhibited. There is likelihood that in view of her Immigration status, it would not have been easy for her to get an alternative employment in Uganda. It. would still have been impossible for her to return home since she would have no money….. She was greatly inconvenienced; she suffered deprivation, humiliation and forced to depend on charity.... She lived like a pauper….."
Lastly he considered general damages may include:
……transport claims, medical treatment, accommodation, education and leave entitlement……"
It must not be forgotten that an employee is entitled to recover damages within the contemplation of the parties flowing from the breach of the contract. Therefore the indemnity which the employer must pay the servant whom he dismisses without notice cannot include compensation for the servant's injured feelings, by reason of the circumstances one of dismissal or for loss which she may sustain makes it more difficult for her to find fresh employment. Damages for breach of contract are in the nature of compensation not punishment: **ADDIS v**

GRAMAPHONE CO. LTD (1909) AC 486. Exemplary or vindictive damages cannot be awarded for breach of contract of employment..

We therefore agree with Mr. Bitangaro that the learned Principal Judge should have considered the respondent's qualifications and therefore the opportunity to get alternative employment. It was naive of her to sit so idle in a foreign country for five years without taking steps to mitigate her plight. It is clear to us that the learned Principal Judge considered matters which should otherwise have been awarded as special damages which factor he conceded) had they been so pleaded like transport, housing and education. That was improper as these are quantifiable claims and therefore to be claimed as special damages.

Considering the reasoning adopted, it is difficult to see in what respect the respondent would be injured after being paid for the six months. Her nature of work was not such that she would wish sit around for reasons other than money consideration. She was a very highly qualified person and was not expected to remain idle but should have looked elsewhere for alternative employment, but instead she stayed around until the period of the contract expired and then returned home immediately.

The test as to when an appellate court can interfere with a finding of the trial Judge as to the amount of damages was laid down in FLINT V LOVELL (1934)1 K.B 361 that.:

"in order to justify reversing the trial Judge on the question of the amount of damages, it will generally be necessary that this court should be convinced either that the Judge acted upon some wrong principle of law or that the amount awarded was so extremely high or so very so to make it, in the judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled"

Also see: **RAMBHAI MALIJIBHAI PATEL - Civil Appeal No.20/42** and recently see: **ECHEN (U) LTD V GERALDINE NAMUBIRU & JOSEPHINE NAMUKASA - Civil Appeal No.29 of 1994**.

In sum the principle applied was wrong but in our view the figure of Shs.4.9m. was not excessive as general damages.

In the result we allow the appeal, set aside the award made by the learned Principal Judge and

substitute an award of Shs.l, 200,000 as salary and U$12,000 overseas allowance.
The appellant shall have the cost, of the appeal and of the suit.

Dated at Kampala this day 28th of April 1998

S.T.Manyindo

Deputy Chief Justice

Mpagi-Bahigeine

Justice of Appeal

J.P.Berko

Justice of Appeal