

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGO

(CORAM: ODOKI, J.S.C., ODER, J.S.C., & TSEKOOKO, J.S.C.)

CIVIL APPEAL 31/1994

WILLY OWACHA:.....APPELLANT

VERSUS

RINGA ENTERPRISESCO.LTD:.....1ST RESPONDENT

PATRICK.A.OKUMU RINGA:.....2ND RESPONDENT

(Appeal from the judgment and orders of the High Court of Uganda, at Kampala (E.S. Lugayizi Ag. 3.) dated 22nd September, 1994 in Civil Suit No. 21 of 1994).

REASONS FOR THE JUDGEMENT OF THE COURT:

We heard this appeal and allowed it. We promised to give our reasons which we now give,

The second respondent is the Chairman and Managing Director of the first respondent which is a holding company of several other companies. One of such subsidiary companies is called Prideyear Motors Ltd., having contact offices in London, in the United Kingdom.

From the pleadings and the evidence of the Plaintiff the facts of this case are simple. The case was heard *ex parte* for purposes of assessment of damages only since the respondents never entered appearance nor did they file their defences.

In 1981/82 the respondents employed the appellant. In December, 1986 the appellant was confirmed in the employment of the respondents in this country as General Manager (Finance and Administration/Ag. Company Secretary). During 1989 the respondents appointed the appellant on secondment to their London contact office - Pride Years Motors Ltd., as Resident Director.. As such Resident Director he was to receive monthly pound sterling 200

and in addition was to be accommodated and maintained at the cost of the respondents. He was free to further his education during his free time.

For the period 1st January, 1990 to 31st December, 1992, (i.e., for 36 months) the appellant was in the London Office of the Respondents performing the respondents' duties. The respondents appear to have paid him the Uganda currency component of his salary but did not pay him the sterling component. He resigned in December 1992 and demanded for his pay. He received none. In January, 1994 he instituted a suit in the High Court praying for, inter alia,

“Special damages of the equivalent of U.K. pound sterling 7,200 with interest at the rate of 30% p.a. from 1st January, 1993”

Pound Sterling 7,200 represent the total pay due in respect of the 36 months.

The plaintiff was the only witness who testified as the case was heard for purposes of assessment of damages.

The learned Judge found as a fact that the respondents owed the appellant a total of pound sterling 7,200 but he dismissed the suit on the ground that the Minister of Finance had not given consent for payment of the money in foreign currency as required by the provisions of **Section 5 of the Exchange Control Act (Cap. 108 of the Laws of Uganda as amended by Decree 18 of 1972.**

Hence this appeal.

“The appeal contains only one ground of appeal which states:“That the learned trial Judge erred in law when he held that Court could not enforce the appellant's claim because the arrangement between the parties lacked the necessary consent of the Minister.”

During the hearing, Mr. Twesigye, learned Counsel for the appellant, conceded that no Ministerial consent was given to the arrangement under which the respondents were to pay the appellant in pounds sterling. But he submitted, and the learned Judge held in his judgment, that the arrangement was not illegal abinitio.

Learned Counsel submitted that it was the respondents who had to seek consent of the Minister before payment and that this the respondents had not done. He submitted that in any case the appellant was seeking for payment in Uganda Currency. He submitted that the

decision or this court in supreme Court civil Appeal No. 23 of 1993 (G.W. Katatumba tia Technoplan vs. Uganda Cooperative Transport Union Ltd. (unreported) supports the appellant claim.

In our view there was a valid service contract between the appellant and the respondents where under the respondents were obliged to pay the appellant pound sterling 200 per month as salary among other benefits. It was the responsibility of the respondents to obtain permission for the payment of the money in pound sterling. It was not the responsibility of the appellant to seek consent. In that regard we agree that the learned Judge erred in dismissing the appellants claim on the ground the Ministerial permission had not been obtained. The provisions of S.5 of the Exchange Control Act as amended by Decree No 18 of 1972 on which the learned Judge relied state that:

5 .Except with the permission of the Minister, no person shall do any of the following,

(a) make any payment to or for the credit of a person resident outside the scheduled territories; or

(b).....

(c) open any account outside the scheduled territories and/or make payment to such account held by a person resident in the schedule territories;

(d) place any sum to the credit of any person resident outside the schedule territories.”

We find nothing in these provisions which bars the appellant from enforcing his claim. As was held by this Court in Katatumba Case (supra) Courts can give judgment in foreign currency leaving it to whoever is to pay it to apply for permission to pay the

money. However in this case the appellant had prayed for payment of pound sterling 7,200 to be made in equivalent to Uganda currency. So the question of consent did not arise. That settles the issue of special damages. The issue of general damages for breach of contract and inconvenience was not dealt with by the learned Judge. In his plaint the plaintiff prayed for general damages. He asked for general damages in his testimony. The learned Judge did not discuss this point although Counsel for the appellant addressed him on it. The memorandum

of appeal prayed for general damages to be awarded in the event of success of the appeal. The appellant's counsel did not suggest a figure.

We think that the assessment of general damages should be made by the trial judge in case, there may be an appeal against such assessment.

For these reasons we held that the learned trial Judge erred in dismissing the suit. We accordingly allowed the appeal with costs. This means pound sterling 7,200 will be converted into Uganda Shillings at the rate obtaining on 01/01/1993. The amount found due will carry interest at the rate of 15% p.a. from the date till payment in full. For purposes of general damages the proceedings are remitted to the trial judge for assessment of general damages.

Dated at Mengo this 21st ..,day of June 1995.

**B.J. ODOKI,
JUSTICE OF THE SUPREME COURT**

**A.O. ODER,
JUSTICE OF THE SUPREME COURT**

**J.W.N. TSEKOOKO
JUSTICE OF THE SUPREME COURT**

**I CERTIFY THAT THIS IS THE
TRUE COPY OF THE ORIGINAL.**

**E.K.E. TURYAMUBONA,
DEPUTY REGISTRAR, THE SUPREME COURT.**