HAZ FARMS LIMITED AND GOLDEN HARVEST ESTATES LIMITED v KELERA MUTHANNA MUTHANNA (1992) S.J.

SUPREME COURT
GARDNER, AG. D.C.J., CHAILA AND LAWRENCE, JJ.S.
S.C.Z. JUDGMENT NO. 7 OF 1992

Flynote
Claim - Right of passage home - Extinguishment of - Reasonable time

Headnote
The respondent was recruited from Bombay to work on the appellants' farm in Zambia on a three-year contract. When the respondent's contract expired, the appellant paid him all his terminal benefits and promised to provide him with air fare tickets to Bombay with his family. The respondent did not travel to Bombay but obtained another job with another company in Zambia. When he heard that the appellants had withdrawn their earlier instructions to a travel agency to issue him with air fares for him and his family, the respondent for the sum of K22,437.60 representing the cost of economy air fares from Lusaka, Zambia, to Bombay, India and the High Court allowed his claim. The appellants appealed.

Held:
(i) It would not be realistic or fair to expect the employer to pay passages at the going rate for a claimant who, because of his own default, delays his departure for an inordinate period.

Cases referred to:
(1) Agholor v Cheeseborough Ponds (Z) Ltd (1976) Z.R. 1
(2) Ozokwo v The Attorney-General (1985) Z.R. 218

For the Applicants: Mr. K.M. Maketo of Christopher Russel Cook & Co.
For the Respondent: A.M. Wood of D.H. Kemp & Co.

Judgment

LAWRENCE, J.S.: delivered the judgment of the court

This is an appeal against a decision of the High Court allowing the respondent's claim for the sum of K22,437.60 representing the cost of economy air fares from Lusaka, Zambia, to Bombay, India.

The facts which were not in dispute were that the appellants by agreement in writing dated 1st November, 1984 employed the respondent for a period of three years as farm manager at their farm in Lusaka.

On 30th June, 1987, the respondent's contract was mutually terminated and it was agreed that the respondent would receive all his terminal benefits which were later duly paid to him. By letter of 21st July,1987, the appellants further agreed to provide the respondent and his family

economy air-tickets for their return to Bangalore in India, from where the respondent had originally been recruited, upon making a firm booking. On 14th August,1987, Steve Blagus Limited a travel agency, confirmed that it had received authority from the appellants to issue air-tickets to the respondent and his family whenever they were ready to travel. The letter from Steve Blagus Limited read:

> **TO WHOM IT MAY CONCERN**
>
> This is to confirm that Golden Harvest Limited, have authorised us to issue tickets in favour of Muthanna KM/PK Mrs K.C. Mr./K.S. Master, whenever they are ready to travel."

The respondent and his family did not, however, make any firm booking nor did they travel to India, but remained in Zambia where the respondent obtained employment with another company.

On 6th July,1988, the respondent was informed by Steve Blagus Limited that the appellants had withdrawn their instructions for the issue of tickets to the respondent and his family. On 15th August,1988, the respondent's advocates served a statement of claim in which they claimed economy air-tickets valued at K22,437.80 from Lusaka to Bombay and on to Bangalore. This statement of claim seemed to be based on a writ of summons dated 30th July, 1987, issued soon after termination, at the time it seems, when the appellants were reluctant to pay any terminal benefits to the respondent. When the appellants paid the respondent his terminal benefits amounting to K43,685.54 in August, 1987, and promised him passage for him and his family back to bangalore, however, the respondent did not travel and did nothing until he was informed by Steve Blagus Limited that the appellants had withdrawn their isntructions to issue the tickets. The statement of claim was then served as we have already stated above.

Having heard the arguments put forward by counsel for the appellant and for the respondent the question here seems simply to whether the trial court's interpretation of the phrase "whenever they are ready to travel" appearing in the letter quoted above meant:

> ".....that the discretion was left to the plaintiff to decide when to travel and thus ...remove the requirement to travelling with a reasonable time..."

Mr. Maketo for the appellants had argued that the learned trial judge's interpretation was erroneous and if accepted in this court would create an absurdity. Citing the High Court case of *Agholor v Cheeseborought Ponds (Zambia) Limited* (1) Mr.Maketo contended that the respondent's right to any air-fares had lapsed on failure to take up the offer immediately or at least within a reasonable time after termination of contract. In fairness to Mr. Maketo, however, he properly later conceded that the right to the passage home could not be completely extinguished and accepted that the claimant would be entitled to the air-ticket or its value at the time of termination or within reasonable period thereafter. We accept this to be the correct position. What is a reasonable period would depend of course on the given facts as to thereason for the delay for the departure of the claimant. In the present case where the facts are somewhat similar to *Agholor's* (1) case above we would respectfully agree with Cullinan J., as he then was, that three months would be a reasonable period in which the claimant could be entitled to the passage or its value.

it is evident from what we have stated above that Mr. Wood's argument on behalf of the respondent that the appellants were estopped from withdrawing their offer to pay the air passages home for the respondent and his family has merit only in so far as the offer cannot competely withdrawn as we have observed above. *Ozokwo v The Attorney General* (2) on which Mr. Wood relied for the proposition which he made before this court that the appellants

were liable to pay the rate of air-fares obtaining at the date of actual payment of the air-fare is clearly distinguishable on the facts. In *Ozokwo* (2) the delay was totally attributable to the Government which failed to pay the fares when so requested soon after the termination of the contract which was found to be wrongful. In the present case the respondent delayed his own departure for over a year after the appellants had accepted full responsibility to pay his passage. In today's situation where inflation is running rampant it would be not realistic or fair to expect the employer to pay passages at the going rate for a claimant who, because of his own default, delays his departure for an inordinate period.

For the foregoing reasons we allow the appeal to the extent that the order of the trial judge awarding K22,437.80 representing the value of air-tickets from Lusaka to Bombay which was the going rate as at 15th August, 1988, a year after the termination of contract is set aside. In its place we order that the appellants do pay to the respondent such amount as would have been the value of the air passages for the respondent and his family had he travelled within 90 days from the date of termination contract. In this respect should the parties fail to agree on teh correct value we order that the matter be determined by the Registrar at Chambers. We award the costs in this court to the appellants.

Appeal allowed