HAZ FARMS LTD AND GOLDEN HARVEST ESTATES LTD. v KOLERA MUTHANNA (1990 - 1992) Z.R. 165 (S.C.)

SUPREME COURT
GARDNER, AG. D.C.J., CHAILA AND LAWRENCE, JJ.S.
20TH AUGUST AND19TH SEPTEMBER,1992
(S.C.Z. JUDGMENT NO. 7 OF 1992)

Flynote
Employment - Contract - Termination of expatriate service - Terminal benefits inclusive of repatriation - Period within which employer obliged to provide tickets or equivalent value.

Headnote
Upon termination of his employment and payment of his terminal benefits, the respondent secured other employment and did not enforce his entitlement to air tickets for himself and family to travel home, until he received notification that the ticket requests have been cancelled by his former employers. He successfully filed an action claiming the air tickets at the current value. The appeal was basically an interpretation of the time period within which the employer remained obligated to provide valid air tickets or their equivalent value.

Held:
An employer's duty to provide passage is limited to a reasonable period of three months. And a failure by the employee to claim the passage or its value within three months will not terminate the employer's duty but will restrict its implementation to payment of the equivalent value of the ticket within 90 days of termination of the employment contract.

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

For the appellant: K.M. Maketo, Christopher Russel Cook and Co.
For the respondent: A.M. Wood, D. H. Kemp and 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 437.80 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 airtickets for their return to Bangalore in India, from whence 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 airtickets to the

p165

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 K.M./P.K. 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 airtickets 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 instructions 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 be 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 . . . removed the requirement of travelling within a reasonable time . . .''

Mr *Maketo* for the appellants and 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 Cheeseborough Ponds (Zambia) Ltd.* [1] *Mr Maketo* contended that the respondent's right to any airfares 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 airticket or its value at the time of termination or within a 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 the reason 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

p166

their offer to pay the air passages home for the respondent and his family has merit only in so far as the offer cannot be completely 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 airfares obtaining at the date of actual payment of the airfare, 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 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.

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 airtickets 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 of contract. In this respect should the parties fail to agree on the 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.