

CHARLES LWANGA

v

CENTENARY RURAL DEVELOPMENT BANK

COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 30 OF 1999.
(ON APPEAL FROM HIGH COURT CIVIL SUIT NO. 887 OF 1996)

BEFORE:

HON. MR. JUSTICE G.M. OKELLO, JA.
HON. LADY JUSTICE A.E.M BAHIGEINE, JA.
HON. MR. JUSTICE A. TWINOMUJUNI, JA.

March 27, 2000

Damages – Appellant seeking special damages for wrongful dismissal – Appeal against trial court’s failure to award special damages – Whether evidence properly evaluated

Interest – Award of interest on decretal sum – Appellant seeking commercial interest rate from date of dismissal to date of suit – Trial court awarding interest from date of filing suit till payment in full – Whether proper – Rate of interest applicable

The appellant sued the respondent seeking general damages, special and exemplary damages for wrongful dismissal, false arrest, and malicious prosecution. He also sought interest on the amount claimed and costs of the suit. In its defence, the respondent filed a counter claim in which it sought to recover Shs. 5,576,987 being principal and interest allegedly loaned to the appellant. At the beginning of the trial, the respondent admitted liability and offered to pay a sum of shillings 15,535,265/= as special damages. An interlocutory decree was entered in favour of the appellant for that amount, and court proceeded to determine the balance of the special damages and assess the quantum of general and exemplary damages. The trial judge held *inter alia* that the appellant did not prove special damages, and awarded interest at a rate of 6% on the decretal sum from date of filing of the suit, but no ruling was made on the counter claim. The present appeal was filed on grounds that the trial judge wrongly held that the appellant was not entitled to special damages, erred in law in failing to dismiss the counter claim, and in failing to award interest from the date of the appellant’s dismissal to institution of the suit.

Held:

- (i) The trial judge correctly held that there was no reliable evidence to support the appellant's claim for special damages;
- (ii) The respondent had the duty to prove its claim in the counter-claim to succeed. As it adduced no evidence in proof of the claim, the trial judge ought to have made appropriate finding thereon. The counter claim would be dismissed;
- (iii) In cases of wrongful dismissal, interest runs from the date of dismissal. In the instant case, the trial Judge did not decide on the evidence before her whether interest was payable on the principal sum admitted for the period prior to the institution of the suit and if so at what rate. She only concerned herself with the rate of interest for the period from the date of the suit till payment. On appeal court awarded interest at a rate of 20% being the prevailing bank interest rate, to run from the date of the appellant's dismissal to the date of the suit.

Cases referred to:

Bold v Brough, Nicholson & Hall Ltd. [1963] 3 ALL ER 899

Cremer v General Carmers S.A. 1974 W.L.R 341

Gulam Husein v The French Somali Land Shipping Co. Ltd. [1959] EA 25

Kasekende Muguzi v Centenary Rural Development Bank, HCCS No.812 of 1995(Unreported)

Legislation referred to:

Civil Procedure Act Cap Section 26 (2)

Evidence Act Section 132

JUDGMENT

G.M. OKELLO: JA: This appeal is against the judgment and orders of the High Court (BYAMUGISHA J.) given on May 12, 1998 in High Court Civil Suit No. 887 of 1996.

The appellant had sued the respondent in High Court Civil Suit No. 887 of 1996 seeking general damages, special damages of 21 million shillings and exemplary damages for wrongful dismissal, false arrest, unlawful detention and malicious prosecution. He also sought interest on the amount claimed and costs of the suit.

In its written statement of Defence, the respondent filed a counter claim in which it sought to recover Shs. 5,576,987 being principal and interest allegedly loaned to the appellant. At the beginning of the trial, the respondent admitted liability and offered to pay a sum of shillings 15,535,265/= as special damages. Upon that admission, an interlocutory decree was entered in favour of the appellant for that amount. Hearing proceeded to determine the balance of the special damages and to assess the quantum of general and exemplary damages.

At the close of the trial, the trial judge made the following orders:

1. The appellant did not prove any further special damages beyond that admitted.
2. Shs. 15,535,265/= to carry interest of 6% per annum from date of filing the suit till

payment in full.

3. Two million shillings as exemplary damages against the respondent.
4. Five million shillings as general damages against the respondent.
5. Taxed costs of the suit in favour of the appellant.

There was no ruling on the counter claim. The appellant was aggrieved by orders Nos. 1, 2 (as regards the rate of interest) and failure of the trial court to rule on the counter claim. Hence this appeal.

There are three grounds of the appeal, namely:

- (1) The learned trial judge erred in law and fact when she wrongly held that the appellant was not entitled to special damages because he had no basis for his calculation.
- (2) The learned trial judge further erred in law when she failed to dismiss the counter-claim.
- (3) The learned trial Judge erred in law when she failed to award interest from the date of dismissal to the date of institution of the suit.

The appellant sought from this court orders that:

- (i) The order of the High Court for special damages be varied to include a higher award of 13,544,200 (Shillings thirteen million, five hundred forty four thousand two hundred only).
- (ii) The counter claim be dismissed with costs in favour of the appellant.
- (iii) This court makes an award of interest on the principal sum for the period prior to the institution of the suit.
- (iv) Costs of the appeal be provided.

The appellant's complaint in ground 1 above is that the trial judge erred in holding that the appellant did not prove any further special damages beyond that admitted. Mr. John Matovu, learned Counsel for the appellant, adopted his argument in the trial court. The gist of that argument is that the appellant testified on his own behalf as (P.W.1), called the evidence of Masaba William P.W.2, also a former employee of the respondent and adduced exhibit P.4, supposedly the respondent's salary schedule showing the salary scale and allowances for each member of staff. In counsel's view, the above evidence was not controverted as the respondent called no evidence. He dismissed Exhibit D.2, the respondent's salaries scales, admitted in evidence by consent of both parties for comparison with Exhibit P.4, as forged.

Mr. Kakuba, learned counsel for the respondent, also adopted his arguments at the trial. The substance of his said arguments is that exhibit P.4 on which the appellant based the calculation of his special damages was not authentic as its source was not certain. In his view, the trial judge was right to have believed Exhibit D.4 instead of the unauthenticated Exhibit P.4.

The trial judge dealt with this issue in her judgment in this way:

"In their submissions both counsel persuaded court to rely on their respective documents. I have had opportunity to look at both documents that is exhibit D2 and exhibit P4. At the time both documents were issued, the plaintiff was no longer an employee of the bank. In his testimony, he stated that he got the scales from his friends in the bank. Counsel for the plaintiff in his submission referred court to the case of *Kasekende Muguzi v Centenary Rural Development Bank*, HCCS No.812 of 1995(Unreported) where the court used exhibit P4 and disregarded the schedule of the bank. He therefore claimed that there is good reason for the defendant to prepare forged documents and he invited court to treat Exhibit D.2 as useless. Counsel for the defendant however urged court to treat Exhibit D.2 as authentic. He submitted that it is highly unlikely that an organisation like the defendant bank would give verbal instructions to P.W.2 to effect payment of salaries without putting those instructions in writing. Exhibit D.1 and D.2 are both certified copies of the original. They were tendered by consent for purposes of comparison with Exhibit P.4. When both scales are looked at, it becomes apparent that Exhibit D.2 was accompanied with instructions to all branch managers to effect payment of the revised emoluments for the staff of the bank. Therefore I do not accept the testimony of P.W.2 that he used to get verbal instructions. All correspondence in Exhibit D.2 appear to have emanated from the Personnel Manager, Principal Accountant and the General Manager all Principal Officers of the Bank. I am not persuaded that they forged the salary scales in order to defeat the plaintiff's claim. Admittedly the plaintiff was at a disadvantage in that when salaries were being revised, he was no longer an employee of the defendant and therefore had no access to official information of the bank but that alone does not entitle him to use documents and get damages that he would not otherwise get. Exhibit P4 shows that the figures contained therein were proposed emoluments for management staff. It therefore reasonable to conclude that the proposals were later made official in Exhibit D.2. The plaintiff in his testimony admitted that some figures are similar and others are different. This might be an indication that the proposed emoluments were adjusted before being officially published by the defendant. Further more, the plaintiff s original plaint filed on September 28, 1996 contained a claim of over 19 million shillings as special damages. This figure was amended to over 30 million on March 7, 1997 and further amended to over 21 million. In my view this shows that the plaintiff did not have reliable information on which to base his calculation. All in all, I think the plaintiff has not proved the special damages strictly as the law requires and the figure admitted by his former employer should in all fairness be the correct figure."

I cannot fault the learned trial Judge in the above manner she dealt with the issue. She considered and analysed all the evidence before her and gave reasons for rejecting one side for the other.

Mr. Matovu argued that the appellant gave evidence on his behalf, called the evidence of Masaba William P.W.2 and adduced a documentary Exhibit P.4 to support his claim while the respondent

did not adduce any evidence in rebuttal. He submitted that since that evidence for the appellant was not controverted, the trial judge ought to have found that the appellant had proved his special damages beyond the amount admitted. With respect to the learned counsel, I do not agree with that argument.

Firstly, it is not true that the respondent did not adduce evidence. The salary scale Exhibit D.2 was adduced by the respondent and was admitted in evidence by consent of counsel for both parties. This is evidence. It was considered together with Exhibit P.4 and other oral evidence adduced by and for the appellant. Secondly, it is not true that the evidence for the appellant was not controverted. The record shows that both P.W.1 and P.W.2 were cross-examined on the two documentary evidence and both admitted under cross-examination that the two documents are different. Further, the credibility of these witnesses were also tested in cross-examination. Exhibit D.2 was adduced to controvert Exhibit P.4 that was adduced on behalf of the appellant. Thirdly, it is generally not the quantity of evidence that proves a fact but rather the quality of the evidence that matters. (See Section 132 of the *Evidence Act*). In the instant case, the trial judge carefully analysed the evidence of P.W.1, P.W.2 and Exhibit P.4 and D.2. Of all these, she found that Exhibit D.2 was more credible and believed it. She was entitled to do so. Counsel for the appellant did not show us where the learned judge went wrong. I find no merit in this ground and would fail.

The next is ground 2. The appellant's complaint here is against the failure of the trial judge to rule on the counter-claim. According to Mr. Matovu, the respondent had filed a counter-claim in which it sought to recover a specified sum it allegedly loaned to the appellant. The appellant responded to the claim denying it. At the trial, the respondent adduced no evidence to prove that claim. Yet the trial judge made no ruling on the counter-claim. In Mr. Matovu's view, that was an error on the part of the trial judge. She should have dismissed the counter claim with costs in favour of the appellant. Mr. Kakuba conceded that the respondent did not prove its counter-claim. It is trite that the rules of pleadings apply to a counter-claim and to a defence thereto as though they are respectively a statement of claim and defence. (See *Precedents of Pleadings* by BULLEN AND LEHCE AND JACOB 12th Edition p. 97).

It is an elementary principle that the respondent had the duty to prove its claim in the counter-claim to succeed. As it adduced no evidence in proof of the claim, the trial judge ought to have made appropriate finding thereon. Unfortunately she did not. I think this was an error. There is merit in this complaint and the ground would succeed.

Finally, the appellant complained against the trial judge's failure to award interest on the principal sum from the date of the appellant's dismissal to the date of institution of the suit. Mr. Matovu argued that the shs. 15,535,265/= adjudged in favour of the appellant as special damages attracted commercial interest for that period prior to the institution of the suit. In his view section 26 (2) of the *Civil Procedure Act* Cap. 65 empowers court to award such interest. He also cited *Gulam Husein v The French Somali Land Shipping Co. Ltd.* [1959] EA 25 at 28 in support of that view.

In response, Mr. Kakuba contended that the issue of interest is a matter of discretion of the court. In his view, the lower court did exercise its discretion and awarded interest at the rate it deemed

appropriate and applied it to the period it considered appropriate. He argued that in contract cases like the present one, where the parties agreed on payment of interest on the principal sum prior to institution of a suit, it should be followed. However, where there is no such agreement as it is in this case, no such award can be made.

The trial judge dealt with the issue in her judgment in this way:

"The question of 40% interest rate claimed in the plaint was raised by the defence. The contention here is that the interest is too high or that it is not awardable in cases of breach of contract. Section 26 (2) of the *Civil Procedure Act* provides:

"Where and in as far as a decree is for the payment of money, the court may, in the decree order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit."

The above provisions, I think gave court discretionary powers to award any rate of interest which it considers reasonable. I consider that interest of 40% claimed in the plaint as unreasonable in the circumstances of this. I have not come across a case like the present one where such interest has been awarded. I consider the court rate of 6% per annum a reasonable rate.....

The sum of Shs. 15,535,265/= which was admitted by the defendant will carry interest from the date of filing the suit till payment in full."

A proper construction of section 26 (2) would show that it empowers court to award three types of interests at the rate it deems reasonable:

- (1) Interest adjudged on the principal sum from any period prior to the institution of the suit. Here, the court must first decide on the evidence, the question of award ability of this interest and then on the rate at which it is to be awarded if any.
- (2) In addition to that, interest on the principal sum adjudged from the date of filing the suit to date of decree. Here, the court decides at its discretion which must be made judicially, the rate of interest to be awarded.
- (3) Further to the above, interest on the aggregate sum so adjudged, from date of decree to date of payment in full.

Gulam Hussein (Supra) to which Mr. Matovu referred us does not seem supportive of his view. It seems to suggest that the question of interest prior to the institution of the suit is a matter of substantive law. "OGUS ON THE LAW OF DAMAGES" at page 100 rationalises award of interest in two ways:

- (1) that the plaintiff is thereby being compensated for being kept out of his money. He has

been deprived of the use of his money from the time he incurred his loss. On that basis, interest is to run from that date.

(2) that the defendant wrongfully withheld the plaintiff's money. The emphasis here is on the defendant's wrongful withholding of the plaintiff's money. On that basis, interest is to run from the date when the defendant ought reasonably to have settled the plaintiff's claim. This is rather punitive.

It is clear from the above that whether or not interest is payable for the period prior to the date of the suit depends on the evidence available. That is why section 26 (2) referred to that type of interest as "interest adjudged".

In cases of wrongful dismissal, interest runs from the date of dismissal. *Bold v Brough, Nicholson & Hall Ltd.* [1963] 3 ALL ER 899 at 858 is a good example of this. In that case, Bold was employed by the defendant as a Managing Director. On July 27 1962 he was summarily dismissed by the defendant. In October 1962 he sued the defendant for wrongful dismissal and sought inter alia damages for loss of earning and interest thereon. Judgment was entered for the plaintiff and damages were later assessed. The rate of interest which was put at 5% per annum was ordered by court to run from the date of dismissal.

In the instant case, the trial Judge did not decide on the evidence before her whether interest was payable on the principal sum admitted for the period prior to the institution of the suit and if so at what rate. She only concerned herself with the rate of interest for the period from the date of the suit till payment. The evidence shows that the appellant was entitled to that amount had he not been wrongfully dismissed. He claimed a commercial interest of 40% because he would have invested the money if he had been paid earlier. I think that is speculative and does not justify an award of a commercial interest. As he was denied the use of the money he was entitled to interest on it prior to the institution of the suit at a reasonable rate. I would put that at 20% it being the current Bank interest rate which I consider reasonable. This is to run from the date of his dismissal to the date of the suit.

Accordingly I find merit in this ground.

In the result, I would allow the appeal in part. Grounds 2 and 3 succeed. The orders of the lower court are set aside and for them substituted the following:

- (1) The sum of Shs. 15,535,265/=, special damages which the defendant admitted shall carry:
 - (a) Interest at 20% per annum from the date of the appellant's dismissal to date of filing the suit.
 - (b) The principal sum adjudged shall carry interest at 6% per annum from the date of filing the suit to date of decree.
 - (c) In addition, the aggregate sum awarded shall carry interest of 6% per annum from date of decree till payment in full.
- (2) Counter-claim is dismissed with costs in favour of the appellant.
- (3) The respondent shall pay the appellant's costs of this appeal.

As MPAGI-BAHIGEINE, JA and TWINOMUJUNI JA, both agree, the appeal is allowed on the above

terms.

A.E.N. MPAGI-BAHIGEINE, JA: I have read in draft the judgment of G.M. OKELLO, J.A. I am of the same opinion. However I would only make a brief comment on the issue of interest. In principle interest should run only from the date (after accrual of the cause of action) when the plaintiff incurred the loss in question, but the Court has a discretion to fix a later date especially where the plaintiff has 20 unreasonably delayed in filing suit which we have not found to be so in this case. The Court is empowered under Section 26 *Civil Procedure Act* to award interest at different rates in respect of different periods. In business context under which Mr. Matovu sought to claim for the increased rate of 40%, the court would adopt an approach which broadly reflects and represents the rate at which the successful party would have had to borrow the amount recovered over the period in question. *Cremer v General Carmers S.A.* 1974 W.L.R 341. The appellant's cause of action which was rooted in unlawful arrest, wrongful dismissal and malicious prosecution can hardly be classified as business to attract such a high rate. I would therefore agree with the rate of 20% proposed by OKELLO J.A., from date of dismissal to the date of filing suit. I also concur with the other orders as made by him.

TWINOMUJUNI, J.A: I have had the benefit of reading the judgment in draft of G.M. OKELLO, JA. I agree with the reasoning and the conclusion arrived at by him. I have nothing useful to add.