

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUITS NO.278,280,283,284,285,286,289,290,291,292,293,296 of 2013

C,E,H,I,J,K,L,V,W,X,Y,Z.....PLAINTIFFS

VERSUS

1.ATTORNEY GENERAL

2.UGANDA VETERANS DEVELOPMENT LTD.....DEFENDANTS

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The 1st Defendant licensed the 2nd Defendant under the Externalization of Labour Program regulated by the Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2005 to source and formally place Ugandans abroad.

Pursuant to that license, the plaintiffs were asked by the 2nd Defendant to pay money for visas, air tickets and medical examinations which they did, but were never given receipts.

In 2008, the plaintiffs at different times were airlifted to Baghdad and handed over to an Iraqi businessman (Abu Sami) who informed them that their job allocation was as housemaids for USD 200 per month without allowances.

Subsequently, the plaintiffs called an officer of the 2nd Defendant in Uganda to inquire more about their job description, however the officer informed them that they had to do the work allocated to them.

The plaintiffs protested that they did not want to work as housemaids but were instead threatened, beaten and their passports taken away.

The plaintiffs were then taken to various homes where they were subjected to hard and forced labour, slavery, servitude, sexual harassment and abuse, torture, cruel and inhuman degrading treatment, non-payment of wages.

Furthermore, the plaintiffs were never paid the aforementioned agreed salaries for a substantial period of time. As a result of the aforementioned, the plaintiffs suffered pain, anguish, loss of dignity, disease and neglect.

The plaintiffs filed this suit seeking an order that the defendants pay general and punitive damages to the plaintiffs for suffering pain, indignity, slavery, rape, sexual harassment and compensation for non-payment of their wages and money paid for visas, air tickets and medical examinations.

AGREED FACTS

According to the record of proceedings/Joint Scheduling memorandum, the following are the agreed facts;

- That the 1st defendant licensed the 2nd defendant under the externalisation of labour program regulated by the employment (recruitment of Ugandan workers abroad)
- Pursuant to this licence the 2nd defendant exported the plaintiffs to Iraq as housemaids.

AGREED ISSUES.

- (1) Whether the High Court of Uganda has jurisdiction to entertain the matter?
- (2) Whether the cause of action arose in Uganda?
- (3) Whether the plaintiffs voluntarily accepted to go to Iraq to work as maids?
- (4) Whether the 1st defendant failed in his statutory duties?
- (5) Whether the 2nd defendant trafficked the plaintiffs into slavery?

At the trial all plaintiffs testified in support of their respective cases by way of witness statements which were basically oral. The 2nd defendant testified through one of its directors Kabagambe Asol and also tendered in court some documentary evidence that were exhibited at trial.

Whether the High Court of Uganda has jurisdiction to entertain the matter?

The 2nd defendant's counsel submitted that the plaintiffs stated unequivocally that their alleged mistreatment, rape, overwork e.t.c commenced at the time they were deployed by ABU SAMI into homes of his clients in Iraq; Baghdad and Babylon.

It was counsel's contention that the only challenge the 2nd defendant realises is that if the complaints by the plaintiffs had been filed where the cause of action arose, in Iraq, such court, would have all the liberty to fully investigate the matter and establish the veracity of the plaintiff's allegations.

The plaintiffs' had the opportunity to be received by the American army in Victory base as per their pleadings. They had an opportunity to appear before a Judge in Iraq, the culprits were arrested.

The plaintiffs' counsel submitted that, **Article 139 of the Constitution of the Republic of Uganda** states that the High Court shall subject to the provisions of this constitution have unlimited original jurisdiction in all matters and such appellate and other jurisdiction in as maybe conferred on it by this constitution or other law.

Furthermore, **Section 19 of the Prevention of Trafficking in Persons Act 2009** which encompasses extra- territorial jurisdiction provides that the aforementioned act shall apply to offences committed outside Uganda where the victim was a citizen of Uganda at the time of commission of offence.

In the instant case, the plaintiff are citizens of Uganda and such fall under the bracket of the aforementioned provision which grants jurisdiction to the High Court to try offences committed against citizens regardless of the territory/ jurisdiction.

Important to note is that the 2nd defendant is a recruitment agency licensed by the Ugandan government and the alleged documents (employment contracts) were signed in Uganda which is clearly within the territorial jurisdiction of the High Court.

Determination

It should be noted that the nature of this issue should have been made under Order 9 rule 3 which provides for Dispute as to Jurisdiction. Since I partly handled the matter after it had proceeded, it is being resolved at the end of the trial.

“A defendant who wishes to dispute the jurisdiction of the court in the proceedings by reason of any such irregularity in rule 2 of this Order or on any other ground shall give notice of intention to defend the proceedings and shall, within the time limited for service of a defence, apply to the court for-.....”

(g) a declaration that in the circumstances of the case the court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action

The determination of the proper forum for the adjudication of dispute (the jurisdiction which has “the most real and substantial connection with the dispute”) is primarily governed by the principles formulated by the House of Lords in the case of ***Spiliada Maritime v Cansulex [1987] 1 AC 460***.

The court must consider whether there is prima facie some other available forum having competent jurisdiction that is more appropriate for the trial of the dispute in question. The defendant has the legal burden of proving facts which establish that there is another jurisdiction which has “most real and substantial connection with the dispute”.

The factors which will be taken into consideration “include not only factors affecting convenience or expense (such as the availability of witnesses) but also other factors such as the law governing the transaction and places where the parties respectively reside or carry on business.

Then, the plaintiff would have the legal burden of establishing the facts which would persuade the court why the suit should be heard within the jurisdiction. These might include significant juridical disadvantages in the foreign forum, the potential prejudice that the plaintiff might suffer there; or other circumstances which might, as a matter of justice, clearly override the natural connection between the dispute and that forum. The main consideration is whether

substantial justice can be obtained in the foreign jurisdiction. The court exercises particular sensitivity in making this determination as it is reluctant to judge the competence or independence of another country's judiciary. See ***Sun Jin Engineering Pte Ltd v Hwang Jae Woo [2011] 2 SLR 196***

The discretionary power of a court to decline jurisdiction based on the convenience of the parties and the interests of justice-has become extremely relevant when determining which country's court should preside over a dispute or disagreement involving nationals of different countries. A court will usually dismiss a case when the court determines that the dispute would better be adjudicated in a different forum. See ***Civil Procedure and Practice in Uganda 2nd edition*** page 18 &23.

The defendant counsel raised this objection as to jurisdiction in a haphazard manner and did not give any facts upon which this court would use to find that it had no jurisdiction. The burden of proof of exclusion of jurisdiction of a court is on the party who asserts it. The defendant's counsel attempted to submit from the bar by giving facts which in his view would deny this court jurisdiction. The same have been ignored as such.

According to the facts of this case, the plaintiffs were all recruited into employment in Iraq by the 2nd defendant as the agent of the recruiting agency-M/s Al Khadamt Bureau for Service.

The agreement between the recruitment agency and the 2nd defendant was executed here in Uganda and the subject matter was to be performed in Uganda. In case of any disagreement the Ugandan law was applicable to the resolution of any such disputes.

The plaintiffs were recruited by the 2nd defendant in Uganda and they duly executed their contracts of engagement or employment in Uganda. Although they were to perform their duties in Iraq, they concluded their contracts of employment in Uganda. The law regulating their recruitment was under the Ugandan law.

It is clear the High Court was vested with jurisdiction to determine any issues arising out of their contract of employment.

Whether the cause of action arose in Uganda?

The 2nd defendant's counsel submitted that all the plaintiffs in their plaints and witness statements affirmed and sworn show and confirm that whatever they allege happened outside Uganda.

He contends that all the alleged trouble started the moment they met ABU SAMI in Baghdad-Iraq. The moment they were taken to the various homes they allege the mistreatment started there. Clearly all these happened outside Uganda.

The plaintiffs' counsel submitted that, a cause of action was defined in the case of **Tororo Cement Co. Ltd vs Frokina International Ltd Supreme Court Civil Appeal No. 2 of 2001** as an instance in which the plaintiff enjoyed a right, that right has been violated and the defendant is liable.

According counsel a cause of action was disclosed as the plaintiffs' inherent right to freedom from torture, cruel and inhuman treatment as well as right from slavery was violated as they were raped, enslaved, denied food, overworked while working outside Uganda (Iraq).

However, it is clear from the earlier addressed issue that the territory within which these offences have been committed /cause of action arose is irrelevant for as long as the victims are citizens of Uganda, the recruitment agency is licensed by the Ugandan government and the employment contracts were executed in Uganda.

In the event therefore, issues of whether the cause of action arose in Uganda or not are unnecessary, notwithstanding that the 2nd defendant is still liable for the above acts as the plaintiffs were victims of deceit, manipulation, undue influence of the 2nd defendant who took advantage of their desperation to get jobs.

Determination

This issue is similar to the earlier one resolved by this court. The defendant seems to make an attempt to allude to the same facts that the torture happened and occurred in Iraq.

The plaintiffs' cause of action started in Kampala before and in the offices of the 2nd defendant. The contracts of employment were signed in Uganda and the 2nd defendant remained with equal responsibility over the plaintiffs to the extent of any complaints which could have arisen.

According to the Employment Agreement it was clearly stated that;

MAINTAINANCE OF REGULAR COMMUNICATIONS BETWEEN UGANDA VETERANS DEVELOPMENT LTD AND THE EMPLOYER (SUBJECT TO ANOTHER BINDIND CONTRACT)

The Employer shall maintain accurate and monthly communication with the above Company specifically informing the above Company about compliance with the payment of salary and other remittances to the Employee, progress and adaptation of the Employee to new the environment and or other incidental job challenges. Communication shall be through; www.ugandaveterans.com

It can be clearly seen from the contract that the 2nd defendant was still responsible for the plaintiffs especially about payment of salary. Some of the plaintiffs testified that they were not paid their salary or allowances for overworking. The plaintiffs are rooting their cause of action from the time they executed the Employment Contract and are alleging that they entered the contract with deception from the beginning while in Uganda.

The plaintiffs upon return to Uganda, could not be seen to pursue their claims in another jurisdiction and yet the contract was performed partly in Uganda and partly in Iraq. This court will not hesitate to hear the matter since the plaintiffs would not get substantial justice in jurisdiction which is in a state of confusion.

Secondly, the plaintiffs' case involved challenging the Attorney General for failure breach of its Statutory duty under the **Employment (Recruitment of Uganda Migrant Workers Abroad) Regulations 2005** to establish Labour Assistance Centres to assist and facilitate the deployment and reception overseas migrant workers; and Monitor and provide appropriate advice to workers and foreign principals and employers on employment, travel and recruitment procedure.

The plaintiffs claim and cause of action arises partly in Uganda and partly in Iraq. They are at liberty to chose which jurisdiction they should have their matter heard.

Whether the plaintiffs voluntarily accepted to go to Iraq to work as maids?

The plaintiffs' counsel submitted that the plaintiffs did not voluntarily accept to go to Iraq as housemaids but were rather tricked, deceived and manipulated into working as housemaids.

In the plaintiffs' evidence in chief, for example in the witness statements of PW1, PW2, PW5, PW8, PW4 it is clearly stated by all the plaintiffs that they heard announcements by the 2nd Defendant on media (radio) for professional jobs and non-professional jobs in Iraq. Professional jobs like teachers, nurses, secretaries and non-professional jobs like supermarket attendants in American supermarkets in Iraq.

According to counsel, it is on this basis that the various plaintiffs undertook to go to the 2nd Defendant's offices in Muyenga and apply for jobs that they mistakenly believed to be the ones that they had heard being advertised over the radio and in newspapers. This is evidenced in the witness statements of PW5, PW6, PW7, PW8, PW9, PW12.

The plaintiffs in their witness statements clearly testified that the 2nd defendant informed them of their job descriptions before leaving for Iraq. For example;

- a) PW1 (K) was promised to work as an assistant nurse.
- b) PW2 (E) was promised to work as a salesperson.
- c) PW3 (W) was promised to work as a sales woman.
- d) PW4 (V) was promised to work as a teacher or salesperson.
- e) PW5 (H) was promised to work as a salesperson.
- f) PW6 (Y) was promised to work as a salesperson.
- g) PW7 (X) was promised to work as a secretary.
- h) PW8 (C) was promised to work as a salesperson.
- I) PW9 (Z) was promised to work as a maid for Americans not Iraqis.
- J) PW10 (J) was promised to work as a hotelier.
- h) PW12 (I) was promised to work as a saleswoman.

The plaintiffs also stated in their evidence in chief that they signed their contracts of employment only after getting their visas, four days prior to their departure and that the officials of the 2nd Defendant didn't allow them to read through the contracts (which if allowed, would have helped them discover that they had signed contracts for the wrong/ different jobs) claiming that they were in a hurry

and if they didn't sign there and then they could excuse themselves and forget the jobs.

This is elaborated in the witness statements of PW9, PW7, PW6. This shows that the 2nd defendant took advantage of the plaintiffs overwhelming desire to work thus influencing them to sign the said contracts.

The plaintiffs' counsel submitted that, it is clear that the plaintiffs were desperate for work and saw this opportunity as greener pastures for them and their dependents and as such in a bid not to jeopardize the opportunity, they adhered to all the demands of the 2nd defendant, some of which included not reading the contract, an act that made them oblivious to the fact that they had signed contracts of employment as housemaids.

The plaintiffs in their evidence in chief for example in the witness statements of all witnesses also clearly indicated that on arrival in Baghdad, they were informed by a one Abu Sami an Iraqi businessman that he had purchased them so that they would come to work as housemaids, they also further stated that on finding this out they immediately protested but they were in turn beaten, threatened and their passports confiscated by Abu Sami.

Drawing inference from the above, it is clear that the plaintiffs were:-

- Deceived as to the kind of jobs they were to carry out in Iraq as the running adverts stated professional and non-professional jobs of another kind other than housekeeping.
- Manipulated and tricked into not realizing that they had signed contracts for employment as housemaids as they didn't get to read the contracts owing to the threats and mind games of officials of the 2nd defendant.
- Sold as slaves to Abu Sami to work as housemaids until they paid the money he had paid to the 2nd defendant.
- Not given a chance to come back as their passports were confiscated by Abu Sami.

As such, it is evident that the plaintiffs were victims of deceit, manipulation, undue influenced by the 2nd defendant who took advantage of their desperancy to get jobs and in that case they could not have voluntarily accepted to work as housemaids.

Counsel prayed that this court finds the plaintiffs did not voluntarily accept to go to Iraq to work as housemaids.

The 2nd defendants Counsel submitted that plaintiff H,J & I complained to the Minister of State for Labour, Employment and Industrial relations-Dr. Emmanuel Otaala at the time. They alleged that they were recruited by the 2nd defendant to work as housemaid and taken to Iraq.

That prior to the recruitment the plaintiffs filled a form presented by the 2nd defendant on behalf of AL-KHADAMAIT BUREAU FOR SERVICES. On the first line of the document they filled the words HOUSE KEEPING. The bio data page required experience-Plaintiff H filed that she had 3.5 years' experience in Babysitting, washing, cooking and cleaning.

Another Plaintiff stated in her work experience; "I worked as room attendant in Regency Hotel

The 2nd defendant's counsel submitted that; It would be completely illogical for the prospective employer to take up someone whose experience comprises of; room attendant, cooking, washing, baby sitter, cleaning to become a secretary/teacher or sales person as is alleged by the plaintiff. Furthermore for one to become a sales person, would require atleast basic knowledge of Arabic.

The plaintiffs when confronted during cross examination with the forms they filled they admitted to its content and thus gave credence to the fact that they applied and were recruited as housemaids as per their own application.

Determination

The parties are both giving different versions of the events surrounding the contract of employment. The plaintiffs claim that they were lured and promised other or different jobs like secretarial work, hoteliers or teachers.

The 2nd defendant contended that all the plaintiffs applied for the job of House maids in Iraq.

It is important to note that several persons were taken to Iraq to work according to Plaintiff J who states in his witness statement that; " I and more than 145 other women at various times went to the 2nd defendants offices at Muyenga,; In

September 2008, I and more than 145 women on various dates were airlifted to Baghdad Airport where we found a one Abu Sami.....”

In plaintiff J states that she applied as a Hotelier and her bio data form she filled with the defendant she clearly indicated; JOB: HOUSE KEEPING. WORK EXPERIENCE; I WORKED AS A ROOM ATTENDANT IN REGENCY HOTEL FOR 1(1/2) YEARS.

In another document, she clearly indicated that; POST APPLIED FOR; HOUSE MAID

Plaintiff X applied for a job of Secretary; However her form filled with the 2nd defendant clearly indicated that; Post Applied for; Maid On the Commitment letter dated 18th/o5/2009 it is indicated as follows;

“IX.....have accepted to work as a house keeper in Al-Khadamit Bureau for services Company.

On her consent form it is indicated position applied for; HOUSE MAID signed on 20th May 2009.

The last document she signed was the Employment agreement dated 26th May 2009; The clause titled; **Trade/Designation**; The employee’s service shall for the time being be limited to that of a house keeper.....

Plaintiff Z she was to work as a maid for Americans. Indeed all her forms and documents show that she applied for work as a House maid.

According to the Demand letter availed by Al Khadamit to the 2nd defendant; they sought suitable candidates for work as House Keeper; 200 vacancies at a salary of \$200.

The plaintiffs’ counsel seems to agree that they all signed contracts of employment as House maids but his argument is that they were all duped or coerced and that they signed 4 days before departure while other contended that they signed while going to the airport. All the evidence of the plaintiffs on this matter appeared to be rehearsed(choreographed) in similar manner although the different plaintiffs left for work in Iraq in different groups and time.

There were acute conflicts of evidence between the witnesses on numerous aspects of the events which occurred. It was common ground that the approach to be taken in resolving these conflicts was that commended by Robert Goff LJ in Armagas Ltd v Mundoga SA (The Ocean Frost) (1985) 1 Lloyd's Report. 1.57;

*Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses always to test their veracity by reference to the objective facts proved independent of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. **It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents to the witnesses' motives and to the overall probabilities can be of very great assistance to a judge in ascertaining the truth.***

*Robert Goff LJ's approach is also reflected in more recent authority such as Custmen SGPS SA V Credit (UK) Ltd 2013 (EWHC 3560 at [15]-[23]. **That approach is equally apposite in cases where fraud is not alleged.***

I have evaluated all the evidence available on court record and it is my finding that the plaintiffs applied for work as house-keepers or maids. The documentary evidence seems to contradict the oral testimony. The plaintiffs counsel's argument is that they were desperate to go and work in Iraq and that is why they signed the Employment agreement is untenable and very hollow.

"it is clear that the plaintiffs were desperate for work and saw this opportunity as greener pastures for them and their dependents and as such in a bid not to jeopardize the opportunity, they adhered to all the demands of the 2nd defendant, some of which included not reading the contract, an act that made them oblivious to the fact that they had signed contracts of employment as housemaids."

It is clear that the plaintiffs did not only sign the employment agreements, there are other documents signed prior to the visas being sent like the bio data and other consent forms alluded to.

*“A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of the contract unless coercion, fraud or undue influence are pleaded and proved” See; **National Bank of Kenya v Pipe Plastic Sankolit (K) Ltd & Anor [2001]**.*

The plaintiffs’ counsel also alleged undue influence that coerced his clients to sign the contracts of employment without understanding or reading through. It is important to note that although the doctrine of undue influence is not intended to save a person from their own folly, it is clear that it is intended to prevent victimisation. See **National Westminster Bank plc v Morgan [1985] AC 686**

The undue influence could only be imputed where the defendant’s conduct can be found improper or unconscientious if it resulted in an impairment of the free exercise of the plaintiffs’ will and the free exercise of the plaintiff’s will can only be said to have been impaired by the defendant’s conduct if the latter’s conduct has been improper or unconscientious. There was such undue influence exerted on the plaintiffs. They had to sign the employment agreements after the visas are obtained from Iraq.

I do not see any disparity the plaintiffs were into when they appended signatures and thumb prints on the contract of employment without understanding the contents of the said agreement. The fact that they were going out of the country, they had to be extra cautious in order to avoid recklessly signing documents without knowing the implications and consequences.

Whether the 1st defendant failed in his statutory duties?

The plaintiffs’ counsel submitted that **Article 20 (2) of the 1995 Constitution of the Republic of Uganda** states that the rights and freedoms of the individuals and groups enshrined in this chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.

Article 33(3) of the 1995 Constitution of the Republic of Uganda further provides that the state shall protect women and their rights taking into account their unique status and natural maternal functions in society.

Section 38(1) of the Employment Act provides that no person shall transact in recruitment agency without a valid recruiting permit. This is also emphasized in **Regulation 4 of the Employment (Recruitment of Uganda Migrant Workers Abroad) regulations 2005**.

Furthermore, **Regulation 17 of the Employment (Recruitment of Uganda Migrant Workers Abroad) regulations 2005** also states that the administration shall monitor the compliance of recruitment agencies with their undertakings in connection with the issuance or renewal of the license.

Regulation 3 of the Employment (Recruitment of Uganda Migrant Workers Abroad) regulations 2005 first and foremost interprets administration as the external employment unit of the Ministry responsible for employment. Secondly, it interprets “Ministry” as the ministry responsible for employment which in the instant case is the Ministry for Gender, Labour and Social Development.

According to the above statutory provisions, the Ministry of Gender, Labour and Social Development is tasked with the duty to supervise/ monitor all recruitment agencies that it has licensed to export labour to ensure that their work complies with their objectives before their license is renewed.

According to the 2nd defendant’s witness general statement which was admitted as DW1, the 2nd defendant is a duly registered and licensed company authorized by the government of Uganda to recruit and export labor and was recommended by the government of Uganda through the Ministry of Gender, Labor and Social Development to solicit for prospective employers abroad.

However, the plaintiffs in their evidence in chief/witness statements aver that when they started facing mistreatment in Iraq, they sent out information of their mistreatment through relatives and work colleagues which information reached not only the Ministry of Gender, Labour and Social Development but also the then Inspector General of Police(Kale Kayihura) who in turn promised to intervene but all in vain, which actions were in total disregard of their constitutional duty to protect the plaintiffs and other Ugandans from harm.

Furthermore, during cross examination DW1 first and foremost admitted to having worked hand in hand with government agencies that is the 2nd defendants

advertises for jobs were approved by the Ministry of Gender, Labour and Social Development and they were subsequently granted and ISO clearance for external employment dated 16th March 2009.

Also in cross examination DW1 testified that the 2nd defendant worked together with government and government allowed them to export women as house maids.

Subsequently, DW1 also admitted that the plaintiffs started complaining about suffering in Iraq in 2008, which complaints both the 1st and 2nd defendants were very much aware of but the 1st defendant still renewed the 2nd defendant's license to carry out further labour export on 16th March 2009 and kept their license running till 2011 regardless of the fact that they were in the know of the ongoing complaints of suffering, torture, slavery and sexual abuse from the women that were already in Iraq.

The plaintiffs' counsel further submitted that the 1st defendant under the provision of the ***Employment of Uganda Migrant Workers Abroad Regulations 2005*** is enjoined to make sure that no Ugandan is recruited and taken abroad when there is no definite contract between the recruit and the prospective employer and this rule among many others were not followed by the 2nd defendant and the 1st defendant failed or refused to have the law implemented to the detriment of the plaintiffs.

It was their contention that the 1st defendant under Ministry of Gender, Labour and Social Development failed or ignored to carry out its supervisory role of labour export agencies and therefore the 2nd defendant abused its licenses by trafficking the plaintiffs and other women into slavery in Iraq.

Determination

According to Regulation 54 of the Employment (Recruitment of Uganda Migrant Workers Abroad) Regulations 2005, this provides;

54.(1) The administration may establish Labour Assistance Centres at International Airports and other exit points in the Country.

(2) Labour Assistance Centres shall-

(a) Assist and facilitate the deployment and reception overseas migrant workers; and

(b) Monitor and provide appropriate advice to workers and foreign principals and employers on employment, travel and recruitment procedure.

'Administration' is defined as *"External Employment Unit of the Ministry Responsible for Employment"*.

This would imply a duty and obligation created by the regulations and vested in the Ministry responsible for Employment.

The 1st defendant contended in his defence that they put in place a complaint procedure for any person aggrieved by any action of the Recruitment Agency in accordance with the Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations.

Some of the plaintiffs stated in their witness statement that; The Ministry of Labour failed in its supervisory role by not caring to see whether or not there are valid contracts of employment for them in Iraq before licensing UVDL to export labour.

It would appear from the evidence of the plaintiffs that there was no one at the Airport who would have interrogated the plaintiffs' departure and possible employment terms and conditions in Iraq in accordance with the Employment (Recruitment of Uganda Migrant Workers Abroad) Regulations.

The Ministry responsible for Employment and Industrial Relations was obligated to; Assist and facilitate the deployment and reception overseas migrant workers; and Monitor and provide appropriate advice to workers and foreign principals and employers on employment, travel and recruitment procedure.

This was supposed to be done through Labour Assistance centres at the Airport. It would appear that this centre had not been established at the time the plaintiffs left the country in 2008/2009.

In the modern configuration of things, the fact remains that it is rather rare to find a statute imposing a duty on the administration in clear terms obligating it to do something in certain circumstances. Most of the time, one finds only discretionary powers being conferred on the Administration by law enabling it to do something in certain circumstances in its discretion.. Therefore, the first question which arises is to find out whether a statutory provision confers a discretionary power or imposes a duty on the authority concerned.

Where the statutory power like in the present case provided; *The administration **may** establish Labour Assistance Centres at International Airports and other exit points in the Country.* This means, it had a duty and is obligated to establish labour assistance centres and it had no choice in the matter. The Ministry was supposed to perform the duty as laid down in the law, and failure on its part to do so may result in the breach of the said statutory duty.

Whether an authority has discretion or is under a duty depends, in a particular case, on the interpretation put by the courts on the statutory provision in question. The question whether 'may' or 'shall' used in a provision is directory or mandatory depends on the context in which the word has been used.

Usually, the word 'may' is regarded permissive; it is regarded as conferring a discretionary power on the concerned authority to do something it chooses to do so. But in the present case, the Ministry of Employment and Industrial Relations under the regulations was obligated to establish Labour Assistance Centres although 'may' was used. It was either imposing a duty, or conferring a power coupled with a duty thereon.

The underlying objective of such Labour Assistance Centres is very important to provide assistance to the migrant labourer leaving the country and also ensuring that there is no possible human trafficking of persons under the guise of labour.

The Ministry of Gender, Labour and Social Development failed in statutory duty imposed under the Employment Act and the regulations made thereunder.

Whether the 2nd defendant trafficked the plaintiffs into slavery?

The plaintiffs submitted that **Article 25(1) of the Constitution** prohibits slavery or servitude and clause 2 prohibits forced labor. The right from slavery is non derogable as per Article 44(b) of the Constitution.

Article 1 of the Universal Declaration of Human Rights 1948 , all human beings are born free and equal in dignity and rights. Article 4 prohibits slavery, servitude, forced or compulsory labor. This is also reiterated in Article 8 of the international Covenant on Civil and Political Rights.

Article 24 of the Constitution prohibits torture, cruel, inhuman or degrading treatment or punishment. This guarantee is absolute and in fact prohibitory.

Section 2 (r) of the Prevention of Trafficking in Persons Act 2009 provides that trafficking in persons means the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of abduction, fraud, of deception, of the abuse of power, of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation.

According to counsel, the plaintiffs were recruited by the 2nd defendant by means of fraud, deception when they did not disclose to them that they were to work as house maids and took advantage of the plaintiffs' vulnerability for work.

Section 2 (p) of the Prevention of Trafficking in Persons Act 2009 describes slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

Furthermore, **Section 3 (1) (a) of the Prevention of Trafficking in Persons Act 2009** prescribes that a person who recruits, transports, transfers, harbours or receives a person by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, of the position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation commits the offence of trafficking in persons.

Similarly, **Section 3 (1) (b) of the Prevention of Trafficking in Persons Act 2009** provides that a person who recruits, hires, maintains, confines, transports, transfers, harbours or receives a person or facilitates the aforementioned acts through force or other forms of coercion for the purpose of engaging that person in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude, death bondage, forced or arranged marriage commits the offence of trafficking in persons.

It was counsel's submission that the plaintiffs were recruited by the 2nd defendant by means of fraud, deception when they did not disclose to them that they were to work as house maids and took advantage of the plaintiffs' vulnerability for work.

Secondly, the plaintiffs also stated in their evidence in chief that they signed their contracts of employment only after getting their visas and four days prior to their departure. They also stated that for them to be able to sign the contracts, Gordon an official of the 2nd defendant brought the contracts to them and told them to either sign or if they didn't want, to get out and because of how desperate the plaintiffs were for work, they were forced to sign without reading through their contracts of employment.

Subsequently in cross examination, DW1 admitted to the fact that the plaintiffs were given their contracts four days prior to their departure after already having got their visas, air tickets, paid all accompanying expenses and resigned from their jobs.

It was the plaintiffs' counsel's submission that, the above actions of the 2nd defendants showed that they used ill intention and deceit, they abused their power and toyed with the plaintiffs vulnerability seeing as most of the plaintiffs were desperate, so when they told them to sign the contracts without reading through, they were very willing to obey and as such were easily manipulated and trafficked into slavery by the 2nd Defendants within the meaning of Section 3 (1)(a) of the Prevention of Trafficking in Persons Act 2009.

This shows that the 2nd defendant with ill intention misrepresented to the plaintiffs the jobs that they were supposed to do in Iraq, used threats to get them

to sign the contracts and trafficked them to slavery, servitude, forced labour, torture, inhuman and degrading treatment.

Furthermore, during cross examination DW1 also admitted to hearing about the cries of the plaintiffs and other women in Iraq that is (hard labour, long working hours, sexual harassment and rape, non- payment of their wages, assault, disease, constant fear for one's life) but continuously sent the second, third and fourth batch of women.

In the case of AHMED EL TERMEWY VS HASSAN AWDI& 3 ORS HCCS NO. 95 OF 2012, Justice Elizabeth Musoke held that:

“From the definition of trafficking in persons given under the Act Section 2(r), the plaintiff was a trafficked person as he entered into a partnership contract with the defendants under the belief that he was to act as a manager but it was not the case when he reported to work in Uganda. He was further deceived that he was to be provided with housing, transport and food allowance but all in vain. He was therefore recruited through deceit and this qualifies him to be a trafficked person under the Act”

The defendant's counsel submitted that the Employment Agreement was signed on the 22nd April 2009, while the CONSENT FORM was signed on the 27th day of February 2009. There was ample time between consent form and signing of agreement of 60 days. The plaintiff Y fully gave her consent and wilfully signed the employment contract and is estopped from denying the consent and agreement.

Plaintiff X signed several documents agreeing to work as house maid in presence of her own brother Tandeka Enoth.

Plaintiff V also signed several documents as maid. In addition unlike other...she signed a RETIREMENT AGREEMENT stating that; *“ I ...V.....have voluntarily decided to retire from my employment as a house maid in Iraq. I have received salary for the period I have worked and im physically fit as I had come from Uganda. The company does not owe me anything”*

Determination

This issue is directly similar to the issue raised of whether or not the plaintiffs voluntarily agreed to work as maids. I believe the plaintiffs' counsel wanted to give the case a human rights and international law perspective.

Secondly, the main issue agreed upon for determination was about slavery but the plaintiffs' counsel tried to broaden it by including servitude, forced labour, inhuman and degrading treatment.

Black's Law dictionary 11th Edition page 1669 defines *Slavery* to mean; *A situation in which one person has absolute power over the life, fortune, and liberty of another. The practice of keeping individuals in such a state of bondage or servitude.*

Section 2 (p) of the Prevention of Trafficking in Persons Act 2009 describes slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. See also *Slavery Convention*

Trafficking in persons, the primary objective of which is to gain profit through exploitation of human beings is prohibited by international law and criminalised by our national legislation- ***Prevention of Trafficking in Persons Act, 2009***

The trafficking of person involves an element of involuntary acts against the will of the person being trafficked. ILO Convention 29 prohibits forced labour as "all work or service which is exacted from any person under the menace of any penalty or for which the said person has not offered voluntarily.

The 2nd defendant as agents of *Al Khadamat Bureau for Service* secured employment for over 200 persons as house keepers. Indeed adverts were run on radio inviting potential employees and the plaintiffs responded. Indeed one of the plaintiffs stated that they were about 145 applicants and indeed they all went to Iraq.

We cannot take a complaint of a few of them who were mistreated by the employers to conclude that all the 145 were trafficked. It is absurd that the plaintiffs went through heinous ordeal of torture, sexual harassment or rape, long working hours and generally mistreatment. All the above notwithstanding, the

plaintiffs were never trafficked but rather suffered in new employment in Iraq which they voluntarily sought to be employed.

It was supposed to be the duty of the government to monitor the migrant labour and respond to their complaints when they arose. It is true that many more persons are in employment in the same region and are working.

The plaintiffs were never trafficked by the 2nd defendant into slavery.

This suit partly succeeds. Each party shall bear its costs.

It is so ordered.

SSEKAANA MUSA

JUDGE

14th /04/2020