**ANGELO CATTANEO**

**v.**

**CANDIDO DA ROCHA**

SUPREME COURT OF NIGERIA, LAGOS COLONY (FULL COURT)

11TH NOVEMBER, 1932

**LEX (1932) – SCN 11/11**

OTHER CITATION

2PLR/1932/1 (SCN-LC)

**BEFORE THEIR LORDSHIPS:**

KINGDON, C.J. (DISSENTING OPINION)

BERKELEY, J. (LEAD JUDGMENT)

BUTLER LLOYD, J.

**BETWEEN**

ANGELO CATTANEO – Appellant

AND

CANDIDO DA ROCHA – Respondent

**REPRESENTATION**

E. MOORE (PALMER with him) - For Defendants–Appellants.

A. ALAKIJA - For Plaintiff–Respondents.

**ISSUES FROM THE CAUSE(S) OF ACTION**

EMPLOYMENT AND LABOUR LAW:- Master and Servant – Wrongful dismissal – Measure of damages – Restitutio in integrum Possibility of other employment – Whether relevant

**MAIN JUDGMENT**

The Judgments delivered in the Full Court on 11th November, 1932, are as follows (the parts of the judgments dealing only with the question of fact being omitted):

BERKELEY, J.

The Second ground of appeal is concerned with the amount of damages awarded in the Court below to the respondent. The Appellant protests that it is excessive and not in accordance with law.

As a fact, the Court below gave the respondent what he claimed. That is to say the fall amount of the remuneration which he would have received had the contract of service been allowed to run its full term. Counsel for the appellant argued that this was excessive in that it did not take into consideration the possibility of the respondent obtaining other employment during what would have been the un–expired term of the contract of service. He quoted Lord Blanesburgh in Bell and Snelling v. Lever Brothers Ltd. (101 K.B.D.) to the effect that the plaintiffs could not succeed in their claim to damages measured by the sum of the emoluments which they would have received had the contract run its course, because it was necessary to consider that they were free to obtain other employment and the possibility of their doing so must be taken into account. Basing himself on Lord Blanesburgh counsel for the appellant contended that in the case now under appeal the Judge in the Court below was wrong in awarding the full amount of the claim based on the emoluments which the respondent would have received had the contract of service not been interrupted because the Court below was bound to take into consideration the possibility of the respondent obtaining employment and even if such possibility seems remote to a degree, yet the Court must take it into consideration and assess it at some figure.

I do not think that Lord Blanesburgh’s dictum can bear the full weight of the implications which counsel for the appellants seeks by his interpretation to place upon it. It seems to me that he is claiming for the possibility of obtaining employment a status analogous to that of a contingent remainder which, though it be remote, must be regarded as having some value however minute. But the possibility of employment may as a matter of actual fact have no value whatsoever. And it is not improbable that this is the position in the case of the present respondent in the opinion of the Judge in the Court below. Counsel for the appellants argued that there is nothing to show that the learned Judge took this point into consideration when assessing the damages. But the question of damages was argued before him by counsel and the question of obtaining other employment was then raised. It must be assumed that he looked at the question from all its sides, and that in doing so he dismissed the possibility of employment as being valueless. In my opinion this would, in the then condition of business in Lagos, be a reasonable and proper estimate to make of the respondent’s prospects.

In my opinion the Judgment of the Court below should be upheld and this appeal be dismissed.

KINGDON, C.J. [DISSENTING OPINION]

I am of opinion that this appeal should be allowed and that in the Court below the plaintiff’s claim should have been dismissed except for the £46 admitted. But as the majority of the Court are of a contrary opinion it becomes necessary to examine the second point upon which this appeal is brought, viz.:–the measure of damages.

In Halsbury’s Laws of England, Volume 20, paragraph 218, the law on this point is thus set out:

“The damages are to be measured by the amount of wages which the servant has been prevented from earning by reason of his wrongful dismissal, including the value of any other benefit to which he is entitled by virtue of his contract and of which he is deprived in consequence of its breach, after taking into consideration the probabilities of his obtaining employment elsewhere. If, therefore, he obtains other employment immediately after his dismissal, the amount which would otherwise be payable as compensation must be reduced by the amount of remuneration which he receives in respect of such employment, and if he is paid the same or higher wages, his lose is merely nominal. Moreover, it is his duty to minimise his lose, and he must therefore use due diligence in endeavouring to obtain employment. If, but for his own default or neglect, he could, immediately after his dismissal, have obtained suitable employment at similar wages, he cannot recover more than nominal damages against the master. He is not, however, bound to accept employment of a different kind, or even a lower position in the same kind of employment, and, in such case, it is immaterial that the rate of wages offered is the same. In assessing the damages the jury is entitled to take into consideration all that has happened, or is likely to happen, to increase or mitigate the servant’s loss down to the day of trial.”

Various cases, none of them very recent, are quoted in support of this exposition of the law. It is clear that the learned Judge in the Court below had this aspect of the case before him, but it is not clear whether, in refusing to make any reduction on account of the possibility of the plaintiff obtaining other employment, he did so on the ground that the defendants had led no evidence to show what reduction (if any) ought to be made, or on the ground that sitting as a jury he assessed the money value of that possibility at nil. There would be every justification for such an assessment for it is notorious that during the last year business has been at a standstill and poets suitable for such a man as the plaintiff extremely difficult, if not impossible, to obtain.

Counsel for the plaintiff has, however, quoted to this Court a very recent case in which the law is stated rather differently from the exposition in the above quotation from Halsbury’s Laws of England.

In the House of Lords in the case of Bell and another v. Lever Brothers Limited (101 K.B.D.; 146 L.T.R., page 258, at page 26:3) Lord Blanesburgh said:

“But these sums could not have been recovered even in actions for wrongful dismissal, because allowance must in each case have been made for the fact that the whole sum was being immediately paid and for the further fact that each appellant was being released from his obligation of continued service and was being left free to seek other remunerative employment.”

It is suggested that the last part of this dictum goes further than merely saying that the possibilities of the dismissed servant obtaining other employment must be considered, and lays it down that, as a matter of law, such possibility must be evaluated by the Court at something, however small. I do not think the dictum justifies this proposition, it only seems to me to be to the effect that in the case then under consideration, if the action had been for wrongful dismissal, some reduction of damages must have been made because both the dismissed servants would have been able to obtain other remunerative employment without difficulty. But what of the statement that allowance must have been made for the fact that the whole sum was being immediately paid. Counsel has not quoted and I have been unable to find, any reported case in which such an allowance has actually been made, but I think the dictum must be followed as the most authoritative statement of the law.

Moreover it is clearly based on the first principle of the assessment of damages.

In the case of Chaplin v. Hicks (19112 K.B. 786 at page 794) Fletcher Moulton, L.J., said “There is no other universal principle as to the amount of damages than that it is the aim of the law to ensure that a person whose contract has been broken shall be placed as near as possible in the same position as if it had not.”

Now to give a wrongfully dismissed servant a lump sum down equal to the full amount of the salary and allowances he would have received if he had not been dismissed is to place him not in the same position but in a better position than if there had been no dismissal. If the salary is large and the term appreciable the interest alone which the money might earn may amount to no negligible sum, and in addition there is the avoidance of the risk that the money might never be earned owing, for instance, to the death of one of the parties or the bankruptcy of the employer.

In my view, therefore, the dismissal of the plaintiff in this case being held to be wrongful, the two sums of £165 and £180 awarded by the Court below as damages for loss of salary and allowances respectively should each be reduced by a small amount.

BUTLER LLOYD, J.

I have had an opportunity of reading the judgments which have just been delivered and I agree though with some hesitation with Mr. Justice Berkeley in not seeing, sufficient reason for reversing the learned trial Judge’s finding that the dismissal was wrongful. My reasons for doing so are the same as his.

On the question of damages I agree with the learned Chief Justice. It is true that I can find no reported case in which a specific reduction has been made for the value of a payment “in presenti” as against a future payment but I think that Lord Blanesborough’s dictum on the point is entirely in accord with the principle of restitutio in integrum, and the circumstance that the reported cases are silent on the point may be due to the fact that in England the possibilities of other employment are such that a considerable reduction in damages is always made without distinguishing between the several considerations on which the reduction is based.

I think that the appeal ought to be allowed to the extent of reducing the damages by a sum representing the difference between the value of payment at the date of the judgment and that of payment of the several items at the due dates.