

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD. 2025

CORAM: BAFFOE-BONNIE JSC (PRESIDING)

AMADU JSC

KULENDI JSC

ASIEDU JSC

DARKO ASARE JSC

19TH MARCH, 2025

CIVIL APPEAL

J4/27/2024

EBENEZER AYENSU ... PLAINTIFF/APPELLANT/RESPONDENT

VRS

1.MR. DAVID ASAMOAH BOADI ... 1ST
DEFENDANT/RESPONDENT/APPELLANT

2.MR. MICHAEL EDWIN BREFO ... 2ND DEFENDANT/RESPONDENT/APPELLANT

JUDGMENT

DARKO ASARE JSC:

1. My Lords, the appeal before this Honourable Court stems from a judgment delivered by the Court of Appeal, Accra on the 7th of July 2022, wherein the Court made an award in favour of the Plaintiff/Appellant/Respondent for expenses incurred in his repatriation to Ghana, after the termination of his employment contract with the Defendants/Respondents/Appellants in Liberia.
2. For purposes of convenience, the Parties in these proceedings, shall bear the same designation that they bore in the trial court and accordingly the Plaintiff/Appellant/Respondent herein shall be described as the Plaintiff, whilst the Defendants/Respondents/Appellants herein as the Defendants

FACTS

3. The Plaintiff's claim arose from an employment contract for a term of one year from July 2012, by which he was engaged by the Defendants, a team of electrical contractors, through an organization by the name of Neural Link Engineering (NLE) which had won a contract in Liberia with the Liberia Electricity Corporation (LEC) to check on illegal meter connections. During the project, the Plaintiff sustained injuries and underwent surgery. He alleged that the Defendants abandoned him and failed to ensure his safety and repatriation to Ghana amidst the Ebola outbreak. The prayer for relief followed on from the particulars of the claim, and sought the following: -

1. *An order to defendants to take care of plaintiff's medical treatment following his engagement by defendants to work in Liberia in the course of which he broke his thigh which now has a metal implanted which is overdue for removal.*

2. One million dollars for injuries suffered upon his engagement by the defendants as an artisan to work for defendants in Liberia and other expenses incurred till his return on 3rd July 2015 which covers:

a. Pain and suffering....

b. Loss of blood... USD300,000 USD200,000

c. Transport and repatriation from Liberia..... USD100,000

d. Loss of amenities... USD400,000

3. 3% interest on LIBOR or 30% on the Ghana Cedi equivalent

4. Costs

4. In their Statement of Defence, the Defendants averred that the Plaintiff was provided with medical care and treatment, and that his engagement was extended beyond the initial one-year period. They further stated that the Plaintiff refused to comply with arrangements made for the removal of the implant and instead insisted on having the procedure done at the 37 Military Hospital in Accra. The Defendants denied abandoning the Plaintiff and contend that he left the group house without notice and remained incommunicado. They also pleaded that the Plaintiff's action is statute-barred.
5. The trial court found in favour of the Defendants, holding that the action was indeed statute-barred. The Plaintiff appealed to the Court of Appeal, which partially allowed the appeal, finding that the Plaintiff's action was statute-barred, save for the claim for transport and repatriation. The Court of Appeal awarded the Plaintiff GHS200,000 for transport and repatriation.

6. This is how the Court of Appeal summed up its conclusions: -

“Consequently, the claim for transportation and repatriation from Liberia succeeds. However, there is no evidence to indicate how the amount of One Hundred Thousand United States Dollars (\$100,000.00) was computed to arrive at that figure. Considering the air fare and the failure of the Defendants to repatriate the Plaintiff, and he had to come by land and suffer all the inconvenience with his state of disability, and the fact that the metal implant has to be removed, we award the sum of Two Hundred Thousand Ghana Cedis (GH¢200,000.00). The appeal succeeds in part. Cost of Twenty Thousand Ghana Cedis (GH¢20,000.00) awarded in favour of the Plaintiff/Appellant against the Defendants/Respondents.”

7. The present appeal before this Honourable Court challenges the award made by the Court of Appeal and formulates the following grounds: -

- i) *The Court erred in law and in fact when it treated the relationship between the Appellants and the Respondent as a foreign contract without any basis.*
- ii) *The Court misdirected itself on the facts when it failed to find that the Respondent had voluntarily failed to exercise the right to repatriation before the expiry of three months from the date of expiry of his employment.*
- iii) *The Court misdirected itself when it acted upon wrong considerations in awarding the extremely high and excessive sum of Two Hundred Thousand Ghana Cedis (GHS200,000) as damages for transportation and repatriation.*

8. The relief sought was for an order to set aside the award by the Court of Appeal of Two Hundred Thousand Cedis (GHS200,000) made in favour of the Plaintiff for damages for transportation and repatriation.
9. Ground (i) of the appeal was abandoned with Learned Counsel for the Defendants electing to argue grounds (ii) and (iii) of the Notice of Appeal

Submissions by learned Counsel for the Defendants

10. At this re-hearing, learned Counsel for the Defendants disputes the Court of Appeal's decision, advancing two key arguments. Firstly, he contends that the Court overlooked the exemptions outlined in Regulation 37 of the Labour Regulations 2007, LI 1833, which relieve employers of their repatriation obligations in specific circumstances, including an employee's failure to exercise their repatriation right within three months of their employment contract's expiry.
11. According to the Defendants' Counsel, the Plaintiff's refusal to submit a written repatriation request, combined with his abandonment of the Defendants' rented accommodation and his decision to remain incommunicado, amounted to a waiver of his repatriation rights, which, if properly evaluated by the Appeal Court, would have yielded a decision antithetical to the one rendered.
12. The second ground upon which the decision of the Court of Appeal was assailed was premised on the fact that the award of GHC200,000.00 was far in excess of what was contemplated by the law to constitute repatriation expense. In

Defendants' Counsel's view, the factors which the Court of Appeal considered in reaching the quantum for the award were extraneous and thereby resulted in a wrongful exercise of discretion which warranted this Court's interference with the said award. Learned Counsel for the Defendants summed up his submissions thus: -

"... the Court of Appeal in its assessment of damages for repatriation considered items like airfare, failure to repatriate, inconvenience via travel by land and cost of removal of metal plates. With all due respect to the Court of Appeal, aside "air fare", there was no justifiable basis for all the other considerations".

13. Learned Counsel for the Defendants concluded his written brief with an invitation to this Court to vary the damages awarded by the Court of Appeal for repatriation since *"... it is extremely high and was based on wrong considerations thereby making it an erroneous estimate of what the Plaintiff was entitled to"*

Submissions by learned Counsel for the Plaintiff

14. Upon reviewing the Plaintiff/Appellant/Respondent's Statement of Case filed on the 1st February 2024, we note that it is deficient in meeting the standards prescribed by Rule 18(6)(a) of the Supreme Court Rules, 1996, CI 16, which mandates a comprehensive statement outlining the party's entire case, arguments, relevant authorities, and statutory references.
15. The Statement of Case filed by learned Counsel for the Plaintiff merely reproduces select provisions of the Labour Regulations 2007, LI 1833, and in a rather superficial and cursory manner, invites us to dismiss the appeal, without

engaging in any substantive legal analysis, providing supporting arguments, or citing relevant authorities to buttress his client's case.

16. We deem Counsel's filing to be a clear affront to the dignity of this Court's processes and a mockery of the Statement of Case contemplated by Rule 18(6) of CI 16. Such conduct has been aptly censured as "procedural impertinence" and, in our view, demonstrates a regrettable lack of professionalism. We stress that Counsel entrusted with litigants' briefs before this Court have a fiduciary duty to exercise utmost proficiency, diligence and industry in their duties, lest they breach the standards of professional etiquette.

Consideration of Issues

Ground (ii)

The Court misdirected itself on the facts when it failed to find that the Respondent had voluntarily failed to exercise the right to repatriation before the expiry of three months from the date of expiry of his employment.

17. From the manner in which this ground of appeal has been formulated, there is no doubt that the Defendants are complaining about the Court of Appeal's assessment of the evidence surrounding the exercise of the Plaintiff's right to be repatriated to Ghana upon the termination of his employment contract, which is the same as the omnibus ground of appeal often couched in terms of the judgment under appeal being against the weight of the evidence on the record.

18. It is trite that the formulation of the grounds of appeal in terms that challenge the judgment's alignment with the weight of evidence necessitates an exhaustive re-examination of the entire record by this Court, to verify whether the conclusions reached by the lower court are adequately supported by the evidence and reflective of a proper application of the relevant law. See cases like Akuffo-Addo v Catherine [1992] 1 GLR 377, SC; Koglex (No.2) v Field [2000] SCGLR 175; Tuakwa v Bosom [2001-2002] SCGLR 61; Ackah v Pergah Transport Ltd & Others [2010] SCGLR 728; Aryeh & Akakpo v Ayaa Iddrisu [2010] SCGLR 891.
19. The facts of this case call for an examination of the circumstances under which an employer who employs an employee in a foreign country assumes a legal duty to repatriate the employee to his home country upon termination of the contract of employment
20. It is perhaps axiomatic that the legal duty imposed on an employer to repatriate his employees back to their home country, at the employer's own expense, is a duty imposed under the common law which has now been crystallized into statute in Ghana.
21. The following key statutory provisions adequately underscore the above proposition of the law.

Section 18 of the Labour Act provides as follows: -

Section 18—Remuneration on Termination of Employment.

(1) *When a contract of employment is terminated in the manner stated in section 15, the employer shall pay to the worker,*

(d) in the case of foreign contract, the expenses and necessities for the journey and repatriation expenses in respect of the worker and accompanying members of his or her family in addition to any or all of the payments specified in paragraphs (a), (b) and (c) of this subsection.

Regulation 36 of the Labour Regulations 2007, LI 1833 provides as follows: -

Repatriation

36, (1) Subject to sub-regulation (3) of regulation 31, an employee engaged under a foreign contract and the member of the employee's family authorised to accompany the worker to the place of employment shall be repatriated at the expense of the employer in the following circumstances.

(a) on the incapacity of the worker through sickness or accident during the journey to the place of employment,

(b) on the worker being found on medical examination to be unfit for employment,

(c) on the expiration of the period of employment,

(d) on the termination of the employment because of the inability of the employer to fulfill the undertakings in the contract,

(e) on the termination of the employment because of the inability of the worker to fulfill the undertakings of the contract owing to sickness or accident,

(f) on the termination of the employment by mutual agreement between the employer and the worker unless the agreement otherwise provides,

(g) on the termination of the employment by the employer or the employee where the Chief Labour Officer or a Labour Officer directs in writing, or

(h) any other cause occurring in the course of the worker's employment.

(2) The family member of a worker authorised to accompany the worker to the place of employment shall be repatriated at the expense of the employer when the worker dies during the journey to the place of employment or during the course of the worker's employment.

(3) An employer who contravenes sub-regulations (1) and (2) commits an offence.

22. From the record, there is no dispute that the Plaintiff was employed by the Defendants to perform contractual services in Liberia from August 2012 to July 2013. Undoubtedly therefore the Plaintiff acquired a statutory right under the provisions of section 18 (1)(d) of the Labour Act 2003 (Act 651) and Regulation 36 of the Labour Regulations 2007 LI 1833, to be repatriated back to Ghana upon the termination of his employment with a corresponding duty imposed on the Defendants to carry out this repatriation at their own expense.

23. It is also an undisputable fact disclosed by the record of appeal that, following the surgical procedure and medical treatment received by the Plaintiff after his work-related injuries, he was not repatriated back to Ghana upon the termination of his employment as required by law, in July 2013.

24. The aforementioned facts were not only undisputed by the Parties, but also constituted the shared premise underlying the decisions of both the trial court and the intermediate appellate court regarding the Plaintiff's repatriation
25. Against the backdrop of these uncontested facts, the Defendants vehemently contests any liability for failing to repatriate the Plaintiff, arguing that the Plaintiff's own actions resulted in a waiver of his repatriation rights. The Defendants further assert that, having waived these rights, the Court of Appeal erred gravely in awarding repatriation expenses to the Plaintiff. The pivotal question thus arises: are the Defendants justified in this contention? To resolve this, we must examine the governing legal framework regarding waiver of repatriation rights by employees under foreign contracts.
26. Regulation 37 sets out the circumstances under which an employer can be exempted from payment of repatriation expenses.

Exemption from payment of repatriation expenses

37. (1) The Chief Labour Officer or a Labour Officer may exempt an employer from liability for the expenses of repatriation if the Chief Labour Officer or a Labour Officer is satisfied

(a) that the worker has declared in writing or has signified that the worker does not wish to exercise the right to repatriation and that the worker has been settled at the worker's own request or with the worker's consent at or near the place of employment,

(b) that the worker, voluntarily failed to exercise the right to repatriation before the expiry of three months from the date of expiry or termination of the employment, or.

(c) that the employment has been terminated by, or with the approval of a Labour Officer, in consequence of a fault of the worker.

(2) An employer is not liable for subsistence expense during the period, between the date of expiry of the period of employment and the date of commencement of repatriation, if the repatriation is delayed by the choice of the person to be repatriated.

27. Now what facts do the Defendants rely upon to justify their claim that the Plaintiff waived his right to be repatriated and do those facts, even if established, bring this case under the scope and ambit of the waiver provisions under Regulation 37 of the Labour Regulations, 2007, LI 1833?
28. As evidenced in the record, two key events, constitute the primary basis for the Defendants' contention that the Plaintiff forfeited his right to repatriation subsequent to his employment termination in July 2013.
29. The first incident transpired *circa* July 2013, subsequent to the Plaintiff's surgical procedure in Liberia for his injuries, at which point he expressly requested repatriation to Ghana for further medical treatment at the 37 Military Hospital. The Defendants, however, insisted that the Plaintiff's request for repatriation be reduced to writing as a precondition for facilitating his return to Ghana for further treatment at the 37 Military Hospital. The Plaintiff, nevertheless refused to acquiesce to the Defendants' demand, remaining resolute in his demands to

be repatriated to the 37 Military Hospital in Accra, Ghana, even after his sister intervened in an attempt to mediate the situation.

30. The second incident occurred in May 2015, upon the expiration of the Defendants' contract with the LEC, at which point all employees, including the Plaintiff, were scheduled for repatriation to Ghana. According to the Defendants, the Plaintiff had removed himself from the Defendants' provided accommodation and had relocated with his ex-girlfriend, thereby severing all communication with the Defendants.
31. The Defendants submit that, the Plaintiff's conduct, as evidenced by the two aforementioned incidents, operated as a waiver of his right to repatriation, thereby relieving the Defendants of their statutory obligation to send him back home to Ghana.
32. This Court must thus grapple with the essential question of whether the Plaintiff's actions, as described in the two occurrences, amount to a waiver of his repatriation rights, within the meaning of Regulation 37 of LI 1833.
33. A meticulous examination of the appeal record, informed by the provisions of the Labour Regulations 2007, LI 1833, has led us to identify two pivotal legal consequences that pose a substantial challenge to the viability of the Defendants' defence of waiver of repatriation rights.
34. In the first instance, and in stark contrast to the Defendants' contentions, a careful analysis of Regulation 37 of LI 1833 reveals that the authority to determine whether an employer may withhold repatriation expenses due to an

employee's alleged waiver or misconduct lies with the Chief Labour Officer or Labour Officer, rather than the employer acting unilaterally.

35. Secondly, we are convinced that far from constituting an act of waiver, the allegation that the Plaintiff forfeited his right to repatriation by declining to submit a written request, in fact, rather highlights a blatant infringement of the Plaintiff's repatriation rights.
36. Indeed, a thorough examination of Regulation 37 of LI 1833 reveals that there is no provision requiring an employee entitled to repatriation to submit a written request before exercising their right to repatriation.
37. It is plain that the legislative scheme, as evinced by a harmonious reading of the Labour Act and Labour Regulations, manifests a clear intent to construe waiver provisions narrowly and in a manner that avoids unfairly disadvantaging employees in repatriation matters.
38. The view of the law we have held above reinforces the policy consideration that legislation touching on employees' rights must be construed with caution, to avoid undermining the very rights the legislation seeks to protect.
39. Apart from the fact that there is nothing in Regulations 35-37 of the Labour Regulations 2007 LI 1833, which stipulate a requirement for a written repatriation request, the Appellant's arguments would, if accepted, unduly constrict the scope and ambit of the statutory rights conferred by the Labour Act and Labour Regulations 2007, introducing unwarranted preconditions that find no basis in legislative intent

40. From our foregoing analysis therefore, it is sufficient to say that the legislative regime, as reflected in a combined reading of the Labour Act and the Labour Regulations, confers a right to repatriation unfettered by preconditions, and the Defendants' refusal to repatriate the Plaintiff absent a written request constituted a grave and egregious infringement of his statutory rights, thereby rendering them liable for damages for violation of a statutory duty
41. Having thus by the matters fore-said, established the Defendants' liability for breaching the Plaintiff's repatriation rights, the secondary question of whether the Plaintiff's subsequent actions constituted a waiver of his repatriation rights is rendered inconsequential. This means that the specific issue of whether the Plaintiff waived his repatriation rights by vacating the Defendants' accommodation and remaining incommunicado, becomes a non-issue, devoid of legal significance.
42. Once the Defendants failed to repatriate the Plaintiff, following the spurning of his request to receive further treatment at the 37 Military Hospital, they became instantaneously liable for the ensuing consequences, and nothing the Plaintiff did or failed to do thereafter, can be deemed a waiver of his repatriation rights, which had already been breached.
43. Accordingly, the Defendants' contention that the Court of Appeal misdirected itself when it failed to find that the Respondent had voluntarily failed to exercise the right to repatriation before the expiry of three months from the date of expiry of his employment, has no foundation either in law or on the facts as

established by the incontrovertible evidence on the record. It must be rejected by this Court.

44. Based on the preceding discussions, we are bound to say that the learned Justices of Appeal arrived at the only reasonable conclusion available from the evidence on record, and their decision imposing liability on the Defendants for the Plaintiff's repatriation expenses must stand.

45. Consequently, ground (ii) of the appeal fails and we so hold

Ground (iii)

The Court misdirected itself when it acted upon wrong considerations in awarding the extremely high and excessive sum of Two Hundred Thousand Ghana Cedis (GHS200,000) as damages for transportation and repatriation.

46. Defendants next contests the judgment of the Court of Appeal on the ground that its award of the sum of GHC200,000.00 in favour of the Plaintiff representing the expenses associated with his repatriation to Ghana was excessive.

47. We understand learned Counsel for the Defendants to be saying that notwithstanding the fact that the Plaintiff failed to lead any evidence in strict proof of his claim for special damages by way of repatriation costs and therefore same should fail, upon the authority of such cases as Maersk Gh Ltd v B.T.L.

Ltd Civil Appeal No. J4/33/19 dated the 29th April 2021, the Court of Appeal was entitled to award a fair assessment of a quantifiable loss by way of general damages in lieu of special damages. That notwithstanding however, learned Counsel for the Defendants argued that the basis for the award made by the Court of Appeal for general damages went far beyond what properly should qualify as repatriation expenses, and being based on extraneous considerations, was erroneous, susceptible to appellate intervention.

48. Implicit in the Defendants' contention that the repatriation costs awarded to the Plaintiff were excessive, is the proposition that the said award should have been confined to reimbursing the Plaintiff for his basic travel expenses, without any additional compensation
49. We must now determine whether the Defendants' arguments are consistent with the governing law. To this end, we turn to the express terms of section 18 of the Labour Act and Regulation 37 of the Labour Regulations 2007, LI 1833.
50. Now, as already indicated above, payment of repatriation expenses to an employee whose foreign employment contract comes to an end is regulated by the provisions of the Labour Act, section 18 as well as the Labour Regulations 2007, LI 1833.
51. Section 18 of the Labour Act states as follows: -

"Section 18—Remuneration on Termination of Employment.

(1) When a contract of employment is terminated in the manner stated in section 15, the employer shall pay to the worker,

(d) in the case of foreign contract, the expenses and necessities for the journey and repatriation expenses in respect of the worker and accompanying members of his or her family in addition to any or all of the payments specified in paragraphs (a), (b) and (c) of this subsection"

52. According to section 18 of the Labour Act, the recoverable repatriation costs for an employee whose foreign employment contract has been terminated comprise *".... the expenses and necessities for the journey and repatriation expenses..."*
53. A contextual and purposeful reading of section 18 of the Labour Regulations 2007, leads to one inexorable conclusion: and it is that the legislature clearly intended the costs of repatriation to transcend minimal travel expenses, with employers assuming a corresponding statutory duty to reimburse necessary expenses incurred by employees prior to and during repatriation.
54. Indeed, a bare perusal of Regulation 37(2) of LI 1833 reinforces the notion that repatriation costs extend beyond mere transportation expenses to include subsistence costs. Specifically, this provision stipulates that an employer is exempt from liability for subsistence expenses only where repatriation is delayed due to the employee's own choice, implying that employers are otherwise responsible for covering necessary subsistence expenses pending repatriation.

55. The view of the law we have held above aligns with the generally held view that the legal definition of repatriation costs is not strictly confined to transportation costs. In the context of employment law, repatriation costs encompass a broader range of expenses associated with returning an employee to their home country, typically after a foreign assignment or employment contract has ended.
56. Repatriation costs may include, travel expenses such as flights, accommodation, and other travel-related costs; medical expenses associated with medical treatment or evacuation, if necessary; temporary accommodation costs, and where necessary, costs related to relocating the employee's family, or personal effects.
57. It is worth noting that the specific definition and scope of repatriation costs can vary depending on the employment contract, or insurance policy. In general, however, it bears emphasis that repatriation costs extend beyond mere transportation expenses to encompass a range of costs associated with returning an individual to their home country.
58. It follows therefore from the above exposition, that the Defendants were liable to pay not only the bare travel expenses for Plaintiff's repatriation, but also for all reasonable expenses he incurred pending and during his repatriation to Ghana.
59. Seen in the above light therefore, we must reject learned Counsel for the Defendants' contention that the repatriation award made in Plaintiff's favour

by the Court of Appeal was erroneous by reason only of the fact that it went beyond the bare expenses of his travel costs from Liberia to Ghana.

60. Following a thorough examination of the record and our preceding analysis on the scope of repatriation costs and its legal connotations, we remain unpersuaded that the Defendants have identified any aspect of the record demonstrating that the Court of Appeal abused its discretion by considering irrelevant and extraneous factors or failing to account for pertinent considerations in awarding the amount of GHC200,000.00 to the Plaintiff.
61. It is imperative to remind ourselves that an appellate court is not at liberty to reverse a lower court's order merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. See cases like Ballmoos v Mensah [1984-86] 1 GLR 725, Sappor v. Wigtap [2007-2008] SCGLR 676, and Ward v James ([1965] 1 All ER 563 at p 570
62. Ultimately, having given the record of appeal our most careful consideration, we are not satisfied that the Court of Appeal committed a reversible error when it assessed the award of GHC200,000.00 in Plaintiff's favour as repatriation costs. This renders an interference with the award made by the Court of Appeal in favour of the Plaintiff unwarranted. We decline to do so. Consequently, ground (iii) also fails, and we so hold.

CONCLUSION

63. In conclusion, we have not been provided with sufficient grounds that would persuade us to disturb the judgment of the Court of Appeal, which is hereby affirmed. In the result the appeal fails in its entirety and is accordingly dismissed.

(SGD.)

Y. DARKO ASARE
(JUSTICE OF THE SUPREME COURT)

(SGD.)

P. BAFFOE – BONNIE
(JUSTICE OF THE SUPREME COURT)

(SGD.)

I. O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

(SGD.)

E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

ASIEDU JSC:

[1.0]. INTRODUCTION:

My lords, this is an appeal against a judgment of the Court of Appeal dated the 7th July, 2022 in which the Court of Appeal allowed in part an appeal by the

Plaintiff/Appellant/Respondent (herein referred to as the Respondent) from a judgment of the High Court. The High Court had dismissed the Respondent's entire claim on the basis that the Respondent's action was statute barred. Dissatisfied with the judgment of the Court of Appeal, the Defendants/Respondents/Appellants (herein referred to as the Appellants), who were given judgment by the trial High Court, have lodged the instant appeal to this Court.

[2.0]. NOTICE OF APPEAL:

By a notice of appeal filed on the 28th July, 2022, the Appellants raised the following grounds of appeal:

- i. The Court of Appeal erred in law and in fact when it treated the relationship between the Appellants and the Respondent as a foreign contract without any basis.
- ii. The Court misdirected itself on the facts when it failed to find that the Respondent had voluntarily failed to exercise the right to repatriation before the expiry of three months from the date of expiry of his employment.
- iii. The Court misdirected itself when it acted upon wrong considerations in awarding the extremely high and excessive sum of Two Hundred Thousand Ghana Cedis (GH¢200,000.00) as damages for transportation and repatriation.

In arguing the appeal in their statement of case, the Appellants abandoned ground 1 of the grounds of appeal.

[3.0]. FACTS:

The Respondent herein, by a writ of summons and an accompanying statement of claim issued out of the registry of the High Court, Accra, claimed against the Appellants herein (Defendants therein) as follows:

1. “An order to Defendants to take care of Plaintiff’s medical treatment following his engagement by Defendants to work in Liberia in the course of which he broke his thigh which now has a metal implanted which is overdue for removal.
2. 1M US Dollars for injuries suffered upon his engagement by the Defendants as an artisan to work for Defendants in Liberia and other expenses incurred till his return on 3rd July 2015 which covers:

(a) Pain and suffering	-	USD300,000.00
(b) Loss of blood	-	USD200,000.00
(c) Transport and repatriation from Liberia	-	USD100,000.00
(d) Loss of amenities	-	USD400,000.00

3. 3% interest on LIBOR OR 30% on the Ghana Cedi Equivalent.

4. Costs”

[3.1]. The Appellants won a contract with the Liberia Electricity Company (LEC) and employed the Respondent to do some work in Liberia. The nature of this work was that the Respondent, together with nine other employees, were to travel to Liberia from

Ghana and check illegal connections on electric metres in Liberia. The Respondent averred that the employment was to subsist for a period of one year.

In the course of his work in Liberia, the Respondent sustained serious injurious which resulted in a surgical operation on the Respondent at the Kennedy Memorial Hospital, Liberia, in July 2013. A plate and screws were implanted in the Respondent's thigh which plate and screws were to be removed within a specified time. The Respondent averred further that on arrival in Liberia, the Administrator of Neutral Link Electrical Engineering (NLE), the business proprietorship under whose name and style the Appellants traded, took possession of the Respondent's passport for the purpose of obtaining a residence permit for the Respondent. The Respondent's passport had not been returned to Respondent at the time the suit culminating in the instant appeal was commenced.

It has been the Respondent's case that following the outbreak of the Ebola disease in some parts of Africa, including Liberia, the Appellants failed or neglected to repatriate the Respondent in accordance with law. It is the case of the Respondent that the removal of the plate and screws implanted in the Respondent's thigh had been long overdue, yet the Appellants failed and/or refused to give Respondent the urgent medical attention the Respondent needed. As a result, the Respondent claimed against the Appellants the above reliefs as by the indorsement on the Respondent's writ of summons.

[3.2]. The Appellants, in their respective statements of defence, denied the Respondent's claims, and averred that the Respondent was given the best of medical attention after the Respondent's injury. The Appellants say that the Respondent had healed properly and that the implants could not be removed from the Respondent's thigh by the scheduled date of July, 2014 due to a shutdown of the hospital, Kennedy Memorial Hospital, as a result of the outbreak of the Ebola disease. That although bills had been raised and

cheques issued to have the implants removed by another hospital, JFK Hospital in Liberia, the Respondent refused to comply insisting that the Respondent wanted the implants removed by the 37 Military Hospital in Ghana. The Appellants averred further that the Respondent ignored calls on the Respondent by the management of NLE to put in a written request to have the implants removed in Ghana as the Respondent's request was contrary to the doctor's recommendations and was to require additional financial commitments by the LEC under the terms of engagement. The Appellants denied that the Respondent was abandoned. Rather, the Respondent voluntarily vacated the accommodation provided Respondent by management and went incommunicado. Neither the management of NLE nor that of LEC could reach the Respondent. The Appellants also raised the defence that the Respondent's action was statute barred.

Respondent in his reply to the Appellants' defence, averred that contrary to the Appellants' averment that Respondent voluntarily vacated the accommodation in Liberia, Respondent was rather sacked from the said accommodation by the landlords thereof.

[4.0]. JUDGMENTS OF THE HIGH COURT AND THE COURT OF APPEAL:

At the end of the trial, the High Court dismissed the entire claim of the Respondent against the Appellants. The learned trial Court Judge found that the Respondent suffered the injuries on the 19th February, 2013. Therefore, having commenced the action on the 13th April, 2016, the Respondent was out of the statutory period of three years within which the claim, by its nature, was to be made. Accordingly, the learned Judge concluded **[at page 169 of the Record of Appeal]** as follows:

“I will hold that the Plaintiff’s action seeking damages in respect of the personal injury sustained is statute barred. Additionally, the claim for transport and repatriation from Liberia are special damages and being damages are also caught by Statute [of] Limitation. So is the claim for loss of blood which must be proved. The same applies to the claim for Loss of amenities these are all statute barred as at the time of initiation of the action being claim for damages.”

Reliefs 2, 3 and 4 sought by the Respondent were, therefore, dismissed. In respect of relief 1 sought by the Respondent, the learned trial Judge found that the Respondent had failed and/or refused to co-operate with the Appellants in the medical treatment process. So, the Respondent could not now be heard to ask that the Appellants be ordered to take care of the Respondent’s medical needs. In any event, the learned trial Judge was satisfied that the Appellants had given the Respondent the medical attention necessary in the circumstances.

[4.1]. Dissatisfied with the judgment of the trial High Court, the Respondent appealed to the Court of Appeal. In a judgment delivered by the Court of Appeal on the 7th July, 2022, the Respondent’s appeal was allowed in part. The learned Justices of the Court of Appeal reasoned that the Respondent’s action was indeed statute barred save the relief for repatriation. Accordingly, the Court of appeal awarded the sum of Two Hundred Thousand Ghana Cedis (GH¢ 200,000.00) in favour of the Respondent as claim for repatriation and transport from Liberia to Ghana.

[5.0]. ARGUMENTS OF COUNSEL BEFORE THIS COURT:

In their statement of case filed on the 28th December, 2023, it has been argued by Counsel for the Appellants that, the learned Justices of the Court of Appeal misdirected themselves when they relied on Regulation 36 (1) of the Labour Regulations, 2007 (L.I. 1833) without considering the exceptions stipulated in Regulation 37 thereof. That if the Court of Appeal had considered the provisions in Regulation 37, the Court would have found that the Respondent effectively waived the Respondent's right to repatriation from Liberia and was not entitled to an award. That even if the Respondent was entitled to the claim for repatriation, the award of GH¢ 200,000.00, in the circumstances of the case, was excessive. That the Court of Appeal took into account irrelevant and extraneous matters in making the award. Counsel for Appellants, therefore, prays this Honourable Court to vary the sum awarded as claim for repatriation.

On their part, it has been argued by Counsel for the Respondent, in their statement of case filed on the 1st February, 2024, that the Court of Appeal was justified in the award of GH¢ 200,000.00 as repatriation for Respondent. That the Respondent did not fail to exercise his right to repatriation as the Appellants would want the Court to believe. That the Appellants had always wanted the Respondent to stay back in Liberia, and considering also that at all times material to the case the Appellants held on to the Respondent's passport and plane ticket, the Appellants effectively undermined the Respondent's right to repatriation. Counsel for the Respondent, therefore, prays that the instant appeal be dismissed.

[6] CONSIDERATION OF THE APPEAL:

The instant appeal revolves around the provisions of the Labour Regulations, 2007 (L.I. 1833), and raises the following issues:

1. Whether or not the Respondent had failed to exercise Respondent's right to repatriation; and
2. Whether or not the award of the sum of GH¢200,000.00 is reasonable in the circumstances of this case.

In making a determination, this Court, exercising its appellate jurisdiction, has a duty to review the evidence on record in its entirety in order to ascertain whether or not the Court of Appeal's findings are justified by the facts and the law.

[6.1]. Regulation 36 of L.I. 1833 provides as follows:

"Repatriation

36. (1) Subject to sub-regulation (3) of regulation 31, an employee engaged under a foreign contract and the member of the employee's family authorised to accompany the worker to the place of employment shall be repatriated at the expense of the employer in the following circumstances.

(a) on the incapacity of the worker through sickness or accident during the journey to the place of employment,

(b) on the worker being found on medical examination to be unfit for employment,

(c) on the expiration of the period of employment,

- (d) on the termination of the employment because of the inability of the employer to fulfil the undertakings in the contract,
- (e) on the termination of the employment because of the inability of the worker to fulfil the undertakings in the contract,
- (f) on the termination of the employment by mutual agreement between the employer and the worker unless the agreement otherwise provides,
- (g) on the termination of the employment by the employer or the employee where the Chief Labour Officer or a Labour Officer directs in writing, or
- (h) any other cause occurring in the course of the worker's employment."

Section 37 provides:

"Exemption from payment of repatriation expenses

37. (1) The Chief Labour Officer or a Labour Officer may exempt an employer from liability for the expenses of repatriation if the Chief Labour Officer or a Labour Officer is satisfied

- (a) that the worker has declared in writing or has signified that the worker does not wish to exercise the right to repatriation and that the worker has been settled at the worker's own request or with the worker's consent at or near the place of employment,*
- (b) that the worker, voluntarily failed to exercise the right to repatriation before the expiry of three months from the date of expiry or termination of the employment, or*

(c) that the employment has been terminated by, or with the approval of a Labour Officer, in consequence of a fault of the worker.” (Emphasis)

In considering the appeal, the Court of Appeal found (**at page 247 of the ROA**) that:

“In the written submission of the Respondent Counsel argues that the Plaintiff by his actions voluntarily failed to exercise the right to repatriation. He also argues that the claim for repatriation amounts to special damages and therefore it should be pleaded, particularized and proved.

It is our view that the Defendants [Appellants herein] could have left the Plaintiff’s ticket and passport at the LEC office to indicate their willingness and preparedness to repatriate him to Ghana. They failed to leave his ticket and passport at the LEC office in spite of the fact that the Plaintiff refused or failed to put into writing his intention of having the metal removed at 37 Military Hospital.”

By the preceding finding, the Court of Appeal reasoned that even though the Respondent had not put in a written request, as demanded by the Appellants, to have the metal implant removed at the 37 Military Hospital, that failure or refusal by the Respondent did not take away the responsibility of the Appellants to repatriate the Respondent from Liberia. The Appellants, therefore, should have left the Respondent’s passport and air ticket, while the Respondent could not be reached, as alleged, by the Appellants, with the offices of the LEC where they could readily be accessed by the Respondent as the Respondent was still in Liberia. Having kept the Respondent’s passport and delivered

same to the Respondent in court after the commencement of proceedings in the High Court, the Appellants had failed to repatriate the Respondent as required by law.

In my humble view, it cannot also be said that by failing to put the Respondent's request to be taken to Ghana for treatment in writing, the Respondent had failed to exercise Respondent's right to repatriation. This is so because, in terms of Regulation 36 of L.I. 1833, no such request in writing is a condition precedent to repatriation. It is also noteworthy that at the time the Respondent was to be repatriated, his employment with the Appellants had come to an end as visualized by sub-regulation (c) of Regulation 36.

[6.2]. The Respondent led no evidence to establish the basis of his claim of \$100,000.00 for repatriation from Liberia. During cross examination of the Respondent (**captured within pages 68 to 98 of the ROA**), the issue about the claim did not come up.

The Court of Appeal (**at page 247 of the ROA**) addressed the issue as follows:

“It is also our view that even though the Defendants had made arrangements to have the metal removed at the Hope for Women International Hospital INC and two cheques had been issued in their name by Accident and Casualty Insurance Company and Liberia Electricity Company and the Plaintiff failed to take advantage of it, it is the duty of the Defendants to pay for its removal.”

The Court concluded at page 248 of the ROA that:

“Consequently, the claim for transportation and repatriation from Liberia succeeds. However, there is no evidence to indicate how the amount of One Hundred Thousand United States Dollars (\$100,000.00) was computed to arrive at that figure. Considering

the air fare and the failure of the Defendants [Appellants herein] to repatriate the Plaintiff, and he had to come by land and suffer all the inconvenience with his state of disability, and the fact that the metal implant has to be removed, we award the sum of Two Hundred Thousand Ghana Cedis (GH¢ 200,000.00)."

Counsel for the Appellants has argued that there is no evidence on record to show that the Respondent travelled from Liberia to Ghana by land. The Appellants, however, do not seem to contest the allegation by the Respondent that Respondent's passport was later given to Respondent by the Appellants in Ghana when the proceedings culminating in the instant appeal had commenced in the trial High Court. My Lords, it is my humble view that the most important consideration here is that the Appellants had at all material times retained the Respondent's passport and so, the Respondent would not have had a less stressful transit from Liberia than would have been if he had his passport. Having found that the Respondent led no sufficient evidence to establish his claim for \$100,000.00 as 'transport and repatriation', the Court of Appeal awarded the Respondent the sum of GH¢ 200,000.00. Counsel for the Appellants has argued that this award is excessive, and prays this Honourable Court to vary the award.

In the case of **Standard Chartered Bank (Gh) Ltd v. Nelson [1998-99] SCGLR 810** (cited by Counsel for the Appellants) the Supreme Court stated in holding (2) at page 812 that:

"An appellate court might reverse or vary the award of damages by a trial court in the exercise of its discretion on the grounds that: (a) the trial judge had acted on some wrong principles of law; or (b) the amount awarded was so extremely high or so very small as to make it, in the judgment of the appellate court, an entirely erroneous estimate of the damages to which the plaintiff was entitled."

My Lords, it is my humble view that the above holding applies in this case, and in the circumstances of the instant appeal, the Appellants have not made out a case to warrant an interference by this Court with the award of GH¢ 200,000.00.

My Lords, in arriving at the award of GH¢ 200,000.00, as indicated above, it appears that the Court of Appeal took into account the fact that the Respondent still had the metal implant in his thigh which ought to be removed at cost to the Appellants. This consideration, coupled with the fact that the repatriation accrued in 2013 and now would be paid in 2025 or thereafter, makes the award of GH¢ 200,000.00 reasonable.

[6.3]. Reliance on Section 18(1)(d) of the Labour Act, 2003 (Act 651)

The Court of Appeal stated in their judgment (at page 247 of the ROA) as follows:

"Our view is buttressed by Section 18(1)(d) of the Labour Act, 2003 (Act 651) which provides that when a contract of employment is terminated as under section 15(e) due to sickness or accident in case of foreign contract, the expenses and necessities for the journey and repatriation expenses in respect of the worker in addition to any or all of the payments specified shall be paid to the worker."

Section 18(1) of Act 651 provides:

- (1) When a contract of employment is terminated in the manner stated in section 15, the employer shall pay to the worker,
 - (a) any remuneration earned by the worker before the termination;
 - (b) any deferred pay due to the worker before the termination;

- (c) any compensation due to the worker in respect of sickness or accident; and
- (d) **In the case of foreign contract, the expenses and necessities for the journey and repatriation expenses in respect of the worker and accompanying members of his or her family in addition to any or all of the payments specified in paragraphs (a), (b) of this subsection.”**
(Emphasis)

Section 15 of Act 651 states that:

“A contract of employment may be terminated,

- (a) by mutual agreement between the employer and the worker;
- (b) by the worker on grounds of ill-treatment or sexual harassment;
- (c) by the employer on the death of the worker before the expiration of the period of employment;
- (d) by the employer if the worker is found on medical examination to be unfit for employment;
- (e) **by the employer if the worker is found on medical examination to be unfit for employment;**
- (f) by the employer because of the inability of the worker to carry out his or her work due to

- (i) sickness or accident; or
- (ii) the incompetence of the worker; or
- (iii) proven misconduct of the worker.” (Emphasis)

Considering that at the time the Respondent was due to be repatriated his employment had not terminated as envisaged by section 15, but rather that the period of employment had come to an end, Regulation 36(1) (c) of L.I 1833 applies more appropriately.

[7] CONCLUSION:

As observed above, it is my humble view that the Appellants have not made out a case to warrant an interference by this Court with the award made by the Court of Appeal. The judgment of the Court of Appeal, delivered on the 7th July 2022 is hereby affirmed. The appeal accordingly fails and is hereby dismissed.

(SGD.)

**S. K. A. ASIEDU
(JUSTICE OF THE SUPREME COURT)**

COUNSEL

JOSEPH ARYITEY ESQ. FOR THE PLAINTIFF/APPELLANT/RESPONDENT

N. SEYRAM DARBI ESQ. FOR THE DEFENDANTS/RESPONDENTS/APPELLANTS

