

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION
(SECOND DIVISION); PHILIPPINE OVERSEAS EMPLOYMENT
ADMINISTRATION AND RUBEN S. ...**

G.R. No. 78603. January 28, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 22 May 1979, private respondent, Romeo Buan, was hired by petitioner, Philippine National Construction Corporation ("PNCC") to work as Civil Engineer III in Saudi Arabia for a period of two (2) years with a monthly salary of US\$1,024.00. While in Saudi Arabia, respondent was assigned to work in the Saudi Government's Mecca Stormwater Drainage Project where petitioner was a sub-contractor of Saudi Research and Development Corporation ("REDEC"), the main contractor.

After private respondent had served the full term of his two-year contract, he entered into another two-year contract of employment with petitioner under which he was hired as Senior Engineer at a higher monthly salary of US\$1,350. This new contract of employment provided, among other things, that:

"All expenses for entry visas to Saudi Arabia or residence permits thereof of the EMPLOYEE shall be borne by the COMPANY. The COMPANY shall assist the employee in the renewal of his Residence permit during the term of this contract. Should the renewal of the said permit be denied by the concerned authorities for any reason, this contract shall be cancelled as of the end of the residence period without prejudice to the rights of the employee, benefits or privileges accrued at the time of the cancellation of this Agreement."

On 21 August 1981, private respondent arrived in Saudi Arabia on a re-entry visa sponsored by REDEC. On 1 September 1981, however, private respondent's Residence and Work Permit ("Iqama") expired. Petitioner transmitted to the project manager of REDEC a letter requesting extension of private respondent's Residence and Work permit. However, this request was returned by one Mr. Ziad Yamut with the notation "returned without renewal" together with a handwritten note stating -"having been dissatisfied with the performance -- BUAN -- we suggest that you send him back on the reason that REDEC has refused to renew the IQAMA". As a result, private respondent was repatriated on 26 November 1981.

Private respondent then filed a complaint against petitioner PNCC before public respondent Philippine Overseas Employment Administration ("POEA") for breach of contract or illegal dismissal. In a decision dated 15 April 1986, POEA ordered petitioner to pay private respondent his salary corresponding to the unexpired term of the second contract of employment in the total amount of US\$28,080.00, or its equivalent in Philippine currency at the time of actual payment, plus attorney's fees.

On appeal by petitioner, the decision of the POEA was affirmed by the National Labor Relations Commission ("NLRC"), with some modifications in respect of the award granted. The NLRC reduced the award to an amount equivalent to fifteen (15) months' pay under the new contract, without qualification and deductions.

In this Petition for Certiorari with prayer for temporary restraining order, it is alleged that:

1. The NLRC abused its discretion in holding petitioner liable for breach of contract despite the fact that termination of the overseas contract was due to force majeure and events not foreseen by the parties. The NLRC award contravenes Article 1174 of the Civil Code;
2. The NLRC decision contravenes Article 49 of the labor and workmen law of Saudi Arabia and in effect, sanctions the illegality of complainant's sojourn in Saudi Arabia due to non-renewal of his work permit; and
3. The NLRC abused its discretion in awarding attorney's fees.

On 1 July 1987, a temporary restraining order was issued by this Court enjoining public respondents from issuing and enforcing any writ of execution.

Petitioner basically argues that it did not breach its contract with private respondent when the latter was repatriated. Petitioner reasons that when REDEC refused to sponsor the renewal of private respondent's Residence and Work permit, petitioner could not insist on private respondent's continued employment. It is contended that the refusal of REDEC to sponsor the Iqama was an event not foreseen by petitioner for which reason no negligence could be ascribed to petitioner in entering into the second overseas contract with private respondent.

In holding petitioner liable for breach of contract, the NLRC, quoting largely from the decision of the POEA, stated that:

“x x x the refusal of REDEC, the principal contractor, to sponsor the renewal of complainant's Iqama is not a sufficient justification to cancel or terminate the employment contract (Annex 'C' of complaint and Annex '1' of respondent's petition paper) for under paragraph 13 thereof, it is the denial of the Saudi Arabian Government, more particularly its Ministry of Labor, to renew complainant's Iqama which is contemplated to be a valid ground for its termination/cancellation. There being no application made by REDEC to the Saudi Arabian Government for the renewal of complainant's Iqama, but merely a refusal on its part to sponsor the renewal of the same, respondent cannot utilize paragraph 13 of the contract to justify the termination of complainant's service.

While we may subscribe to the allegation of respondent that under Saudi Arabian Law it is only REDEC which can sponsor the renewal of complainant's Iqama and that in consonance thereto it requested REDEC to sponsor the renewal of the same, we are convinced that the denial by REDEC of aforesaid request is not a sufficient justification to absolve respondent of liability arising from the breach of aforesaid contract. Firstly, respondent is a construction contractor and [under] Policy Instruction Nos. 22 and 34 of our Minister of Labor and Employment, it is considered the direct employer of complainant and as such its liability to the latter is primary and direct; secondly, it was incumbent upon respondent before it entered into a second contract of employment with complainant, to have verified from REDEC, its main contractor, whether it was willing to sponsor the renewal of complainant's IQAMA. Not having done so, it is accountable for whatever consequences brought about by the breach of the aforesaid contract; thirdly, if the refusal of REDEC to sponsor the renewal of complainant's Iqama due to the fact that it was not satisfied with the performance of complainant in the first contract, why did it sponsor the re-entry visa of complainant? Having done so, it is now estopped from claiming that it was dissatisfied with complainant's service. Moreover, the promotion of complainant from a Civil Engineer to a Senior Engineer with corresponding increase of his salary from US\$1,024.00 to US\$1,350.00 negates the claim of REDEC that it was dissatisfied with the performance of complainant..”[1]

We are unable to agree with public respondent NLRC. While it may be true that under our labor laws petitioner is the employer of private respondent, it must be noted that the employment contract entered into by private respondent is an overseas employment contract to be implemented in Saudi Arabia and which implementation must comply with Saudi Arabian law. It is not disputed that petitioner had no official standing in Saudi Arabia

being only a sub-contractor of REDEC, the principal contractor. Indeed, the NLRC conceded that "under the Saudi Arabian law it is only REDEC which can sponsor the renewal of private respondent's work permit". Under Saudi Arabian law, REDEC was to be, in effect, the employer of private respondent.

The NLRC held, however, that the refusal of REDEC to secure the renewal of private respondent's work permit was not enough justification to cancel his employment contract since REDEC is not one of the "concerned authorities" referred to in paragraph 13 of the employment contract. Such concerned authorities, according to the NLRC, consisted only of the Saudi Arabian government. This view of the NLRC does not take into account the requirement under Saudi Arabian laws that a foreigner, to be able to secure a Residence and Work permit, must be sponsored by a Saudi Arabian company. Thus, under the Saudi Arabian Labor and Workmen Law, no foreigner shall be brought into the Kingdom of Saudi Arabia to work nor shall he be permitted there to work with companies and private establishments except after approval of the Minister of Labor and after securing a work permit in accordance with the forms, procedures, and rules prescribed by the Minister of Labor.[2] Furthermore, such permit shall not be granted except after fulfillment of the following conditions: x x x 3) that he shall be under contract with and guaranteed by a Saudi employer, or a non-Saudi employer authorized under the Regulations for the Investment of Foreign Capital x x x."[3]

Petitioner submits that REDEC's sponsorship of applications for Residence and Work permits is predicated upon the execution of another contract of employment between REDEC and petitioner's employees. Under this procedure, REDEC becomes the employer, under Saudi Arabian law, of petitioner's employees and therefore in a position to secure the issuance of their Residence and Work permits. However, the contractual benefits and obligations of the employees continue to be governed by their contract with petitioner.[4] The foregoing submissions of petitioner have not been disputed by private respondent.[5] Thus, although, under our laws, petitioner appeared to be the sole employer of private respondent, it cannot be denied that the latter's employment in Saudi Arabia effectively depended on the will of the Saudi Arabian company.

The inability of petitioner to have private respondent's Residence and Work permit renewed cannot be viewed as actionable negligence on its part. While petitioner might have foreseen the possibility that REDEC might not sponsor anew private respondent's work permit, it was prevented from doing so by the failure of REDEC to give any indication that it was dissatisfied with private respondent's performance. Private respondent cannot reasonably insist that petitioner should have first secured a work permit for him before the former left for Saudi Arabia. Such was simply not the customary practice. An employee's Residence and Work permit is issued after arrival of the employee in Saudi Arabia, the presentation of the employee's passport being a prerequisite to such issuance. Besides, at the time the second contract of employment was entered into, private respondent's original Residence and Work permit had not yet expired. The fact that REDEC did not revoke private respondent's original permit at the end of first contract was, not unreasonably, interpreted by petitioner to mean that REDEC had no serious complaints with respect to private respondent's performance. Moreover, REDEC had sponsored private respondent's re-entry visa which led petitioner to believe that REDEC would also sponsor the renewal of private respondent's Residence and Work permit.

Appraising the second employment contract between petitioner and private respondent in terms of Philippine law, there are three (3) reasons why petitioner cannot be held liable under that contract for breach thereof under the circumstances of this case. The first reason relates to paragraph 13 of the second contract, quoted earlier. It will be seen that the renewal of private respondent's Residence and Work permit constituted a condition to his continued employment in Saudi Arabia. That condition was resolutive in nature, that is, the non-renewal of private respondent's permit had the effect of resolving, or rendering cancellable, that contract.[6]

The second reason is found in the rule that an obligor shall be released from his obligation when the prestation has

become legally or physically impossible without fault on his part.[7] The supervening impossibility of performance, based upon some factor independent of the will of the obligor, releases the obligor from his obligation after restitution of what he may have received, if any, in advance from the other contracting party;[8] the obligor incurs no liability for damages for his inability to perform. In the case at bar, the failure or refusal of REDEC to sponsor the renewal of private respondent's Residence and Work permit had rendered it legally impossible for petitioner to continue to implement its contract of employment in Saudi Arabia of private respondent. There is no dispute that REDEC was not subject to the control of petitioner; indeed, it was petitioner which was wholly subject to the control and even the whims of REDEC. To insist that petitioner should pay for private respondent's wages under the second contract of employment under the circumstances of this case, is to impose an unfair burden upon the latter and to sanction the unjust enrichment of private respondent at the expense of petitioner. To require petitioner to retain the services of private respondent in Saudi Arabia would be to require petitioner to violate the labor laws of its host country. So to require, would be to impose an intolerable burden upon petitioner.

There is a third and final reason why private respondent cannot hold petitioner liable for breach of the second contract of employment. Paragraph 13 of the second contract expressly envisaged the possibility that renewal of the Residence and Work permit of private respondent could "be denied by the concerned authorities for any reason", in which case, the contract would be "cancelled". Private respondent was, of course, aware that his original permit was about to expire when he left for Saudi Arabia the second time. He must or should have been also alerted by the second contract of employment to the possibility of non-renewal of his Residence and Work permit and the ensuing cancellability of the contract. Petitioner did not, in other words, conceal the legal and practical situation from private respondent. We find no bad faith on the part of petitioner.

ACCORDINGLY, the Court Resolved to GRANT due course to the Petition for Certiorari and to REVERSE and SET ASIDE the Decision dated 21 April 1987 of the NLRC in POEA Case No. (L)84-11-1047. The Temporary Restraining Order earlier issued by this Court is hereby made PERMANENT. No pronouncement as to costs.

Fernan, C.J., (Chairman), Gutierrez, Jr., and Bidin, JJ., concur.

[1] Rollo, pp. 26-27.

[2] Article 49, Labor and Workmen Law (Saudi Arabia); Rollo, pp. 30-A - 31.

[3] Id.

[4] Memorandum of Petitioner, pp. 10-11; Rollo, pp. 177-178.

[5] See Rule 9, Sections 1 and 2.

[6] See Article 1181, Civil Code of the Philippines. See also *Hanlon v. Haussermann*, 40 Phil. 796 (1919); *Ang v. Fulton Fire Insurance Co., et al.*, 112 Phil. 844 (1961).

[7] Article 1266, Civil Code. See also *House v. Dela Costa*, 68 Phil. 742 (1939).

[8] See *Labayen v. Talisay Silay*, 52 Phil. 449 (1928); *Castro v. Longa*, 89 Phil. 581 (1951); *Asia Bed Factory v. National Bed Worker's Union, et al.*, 100 Phil. 837 (1957).

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