

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No.513 of 1999

BETWEEN

TAMARA BONNEFIL Plaintiff

AND

SISSONS PAINTS LIMITED Defendant

Before the Honourable Mr. Justice Ventour

Appearances:

Mr. P. Deonarine instructed by Ms. G. Maharaj for the Plaintiff
Mr. A. Sinanan instructed by Mr. C. Kangaloo for the Defendant

JUDGMENT

The Plaintiff's Claim:

The Plaintiff, a Venezuelan national, is claiming against the Defendant the sum of US \$60,672.00 which she contends is owing to her pursuant to the terms and conditions of a work agreement allegedly made between the Defendant acting through its General Manager, Mr. Luis Mora and herself on or about January 30, 1998. The Defendant is a subsidiary of Corimon, a Venezuelan Corporation, with whom the Plaintiff was originally employed since December 1991. By her amended Statement of Claim the Plaintiff contends that on the 15th of August 1994 she was transferred to the Defendant by her

employer, Corimon to assume duties as the Financial Controller of the Defendant Company. She further contends that she continued to be an employee of the Defendant company for a period of four (4) years and that her services were terminated upon the expiration of her work permit in September of 1998. As a consequence, she contends that she has suffered loss and damage and holds the Defendant liable for same.

The Defence:

The Defendant, by its Defence, contends that it never entered into any work agreement with the Plaintiff on January 30, 1998 nor did Mr. Luis Mora, the General Manager of the Defendant had any authority to conclude any such agreement on the Defendant's behalf without the approval of Corimon. The Defendant further contends that at all material times the Plaintiff was an employee of Corimon from December 2, 1991 to September 30, 1997. The Defendant also alleges that it was with the Plaintiff's consent and agreement that she was transferred to the Defendant in August 1994 to assume the position of Financial Controller and that it was only on 1st October, 1997 that the Defendant became an employee of the Defendant upon terms and conditions proposed in a memorandum of the Vice President of Corimon dated 21st October, 1997, the provisions of which were implemented by the Defendant without objection by the Plaintiff.

The Defendant also contends that as contemplated by the said memorandum the Plaintiff entered into a "Contrato de Transaccion Extra-Judicial" on or about 30th January, 1998 whereby the Plaintiff accepted a full and final settlement of the sums stated therein in respect of her employment with Corimon including her years of service from 2nd December, 1991 to 30th September, 1997. As a consequence, the Defendant contends

that the Plaintiff is estopped from claiming any further benefit as an employee of the Defendant prior to 1st October, 1997.

Identifying the Issues and assessing the evidence:

Both Mr. Deonarine, Counsel for the Plaintiff and Mr. Sinanan, Counsel for the Defendant set out in their written submissions what they considered to be the issues arising on the pleadings for determination by the Court. Mr. Sinanan has been more detailed identifying six (6) issues for resolution while Mr. Deonarine has identified three (3). I have identified three broad issues, which when resolved would have considered all the issues identified by Counsel. Those issues are:

- (1) Did the letter of resignation dated 12th August 1988 amount to constructive dismissal by the Defendant and/or was the Defendant obliged to compensate the Plaintiff on determination of her employment;
- (2) Whether as a matter of fact and law there came into existence a concluded work agreement between the Plaintiff and the Defendant as contended for by the Plaintiff and did the Defendant act on or implemented the said agreement or treated same as valid and subsisting;
- (3) Whether the “Contrato” entered into between the Plaintiff and Corimon put an end to all claims in respect of her benefits arising out of her employment from December 2, 1991 to September 30, 1997 and that she is therefore estopped from claiming any further benefit in this regard from the Defendant.

Issue No.1:

Did the letter of resignation of the Plaintiff dated 12th August 1998 amount to constructive dismissal by the Defendant and/or was the Defendant obliged to compensate the Plaintiff on determination of her employment.

The evidence of the Plaintiff on this issue is that she was asked to resign her position with the Defendant by the General Manager Mr. Luis Mora. Her letter of resignation dated 12th August, 1998 addressed to Mr. Mora, the General Manager of the Defendant, stated in part, “Based on the agreement between the parties, I am starting the month of notice of withdrawal in order for you to seek for my replacement.” See exhibit “TB 9”. Clearly, the letter of resignation suggest that there was some agreement made between the Plaintiff and the General Manager and that is consistent with the oral testimony of the Plaintiff. The Plaintiff has testified that at the time, Mr. Mora had told her to resign the position she held with the Defendant because the Company had no intention of renewing her work permit. In fact her evidence is that the General Manager said to her that if she did not resign she will be dismissed. As a consequence, she tendered her resignation. Mr. Melendez, however, testified that the Plaintiff had indicated that she had to return to Venezuela because of her Aunt’s illness hence the reason for her resignation. No such reason is given by the Plaintiff in her letter of resignation.

The evidence has shown that the Plaintiff’s Work Permit was due to expire on September 26, 1998 and that the Defendant had no intention of making any application to renew the said Work Permit. This is what Ms. Dawn Alfonso, Attorney-at-Law acting on behalf of the Defendant had to say in her application to the Work Permit Committee of

the Ministry of National Security on 29th June, 1998 for an extension of the Work Permit of the General Manager Mr. Luis Mora:

“In recognition of the turn around in the company’s financial fortune, Corimon has elected to recall Ms. Tamara Bonnefil, the company’s Venezuelan financial comptroller at the expiration of her current Work Permit which expires on September 26, 1998. Ms. Bonnefil’s position will be advertised shortly and it is expected that this key position is filled by a suitably qualified Trinidadian national.” (See the second paragraph on page 2 of exhibit “TB 8”).

The letter written by Ms. Alfonso clearly indicates that the Plaintiff’s Work Permit was not going to be renewed when it expired on September 26, 1998 and being an expatriate she would not, by law, be able to work in the country without a Work Permit. The Plaintiff said that she had been given the assurance from the General Manager that despite the timing of her resignation, she would, nevertheless, be paid her full salary for the month of September 1998. She was paid the full salary as agreed.

The uncontradicted evidence from the Plaintiff is that the job offers made to her by Corimon pending her return to Venezuela, included an annual compensation package which was less than what she received as the Financial Controller of the Defendant. She refused the offers and thereafter acceded to the request of the General Manager and tendered her resignation to the Defendant with effect from 18th September, 1998. In those circumstances, this Court finds no difficulty in holding that the Plaintiff was constructively dismissed by the Defendant and is therefore entitled to be compensated accordingly.

Issue No.2:

Whether as a matter of fact and law there came into existence a concluded work agreement between the Plaintiff and the Defendant as contended for by the Plaintiff and did the Defendant act on or implemented the said agreement or treated same as valid and subsisting.

In an attempt to justify certain aspects of her claim for compensation by the Defendant, the Plaintiff has contended that by work agreement dated 30th January, 1998 made between herself and the Defendant the parties had reduced into writing a contract of service intended to govern the contractual relationship between them and accordingly, upon her dismissal her annual compensation package ought to be calculated in accordance with paragraph 4 of the said agreement.

The evidence led by the Plaintiff in support of that contention is that she was first employed by Corimon as of 2nd December, 1991 and that in or about 15th August, 1994 she was transferred by Corimon to the Defendant company to carry out the duties of financial controller under certain expressed terms and conditions (see exhibit "TB 12"). Notwithstanding the terms and conditions expressed in exhibit "TB 12" it was agreed between the Plaintiff and Corimon that a portion of her monthly salary would be paid to her directly by Corimon in US currency.

Sometime in the year 1997 there were certain fundamental changes to the labour law in Venezuela as a result of which Corimon took a policy decision to terminate its contractual relationship with all its expatriates and to offer a proposal of salary compensation and severance payment. At the material time there was no dispute that the

two expatriates employed with the Defendant in Trinidad and Tobago were the Plaintiff and the Defendant's General Manager Mr. Luis Mora.

By memorandum dated 17th September, 1997 the Vice President Human Resources of Corimon (Mr. Juan Carlos Larranaga) wrote to the Plaintiff enclosing a "Punto de Cuenta No.3" dated 16th September, 1997 indicating that her adjusted salary conditions with the Defendant had been approved by the Executive President of Corimon effective September 1, 1997 (see exhibit "EM 1"). Mr. Larranaga also advised the Plaintiff by the said memorandum that the cut off date for payment and calculation of severance for services in Venezuela would be 31st August, 1997. I think that it is important to mention at this stage the fact that in the "Punto de Cuenta" which was prepared by Mr. Larranaga and approved by Mr. Francisco Layrisse the Executive President of Corimon and copied to Mr. Mora and the Plaintiff, it was stated that the term "**expatriates**" in so far as it related to the Plaintiff and the General Manager of the Defendant will be discontinued in Corimon and that the new conditions governing the said employees will be strictly in accordance with Trinidad and Tobago Labour Law. A further "Punto de Cuenta" dated 21st October, 1997 was forwarded to the Plaintiff by the Vice President Human Resource proposing new salary conditions (see exhibit "TB 3") which effectively replaced the earlier "Punto de Cuenta No.3" dated 16th September, 1997.

The Plaintiff testified further, that at all material times, Mr. Mora the General Manager of the Defendant, had undertaken to negotiate on her behalf with the Defendant and Corimon written terms and conditions of employment with the Defendant. In pursuance thereof the Plaintiff further testified that by memorandum dated 18th January,

1998 draft copies of the said contract were forwarded to Mr. Eduardo Melendez and copied to Mr. Larranaga. (See exhibit “TB 5”). Under cross-examination by Counsel for the Plaintiff Mr. Melendez said that he never received from Mr. Mora any such memorandum with copies of draft contract as alleged. He also testified of not having any recollection of any conversation on the issue with Mr. Mora on 8th January, 1998 or at any other time with respect to the Plaintiff’s contract of employment.

By the document tendered as “TB 6” the Plaintiff contends that following a meeting held on 29th January, 1998 among Luis Mora, Juan Carlos Larranaga and Eduardo Melendez the draft contracts of employment were discussed and finally approved as evidenced by the signatures of all those in attendance. In that document it appears that Mr. Larranaga had identified three points for consideration, which were pre-notice, vacation and severance payments. The document also indicated that there was agreement on the issues identified by Mr. Larranaga in the draft referred to therein and all three parties signed the document accordingly.

Under cross-examination Mr. Melendez said that although he had not seen the draft contract to which Mr. Larranaga referred (exhibit “TB 6”) he nevertheless appended his signature to the document. This is the testimony coming from a witness who is an Attorney at Law and the Legal Counsel of Corimon.

In any event Mr. Melendez did testify that whatever was discussed and agreed at the meeting (“TB 6”) had nothing to do with the Plaintiff but rather with Mr. Mora alone. He insisted that the company never discussed matters relating to an employee with another employee but he admitted under cross-examination that Mr. Mora was mandated by Corimon to enter into negotiations with the Plaintiff for a new contract of employment

subject to the approval by Corimon. Not surprisingly, Mr. Sinanan saw the need to clarify the matter and during his re-examination of the witness Mr. Melendez said that Mr. Mora was instructed to negotiate a verbal employment condition and not a written contract for the Plaintiff.

I don't accept the testimony of Mr. Melendez on this issue. He was specifically asked by Counsel whether Mr. Mora was negotiating with the Plaintiff on behalf of Corimon with respect to the new contract of employment and he responded negatively. He however, subsequently admitted that Mr. Mora was instructed by Corimon to enter into negotiations with the Plaintiff for a new contract of employment with the Defendant subject to the approval of Corimon. This subsequent admission is consistent with the affidavit testimony of Mr. Colin Kangaloo. In paragraph 8 of his affidavit filed on 20th July, 1999 in opposition to the Order XIV application made by the Plaintiff in these proceedings. Reference to the affidavit has been made as a result of the notice filed by the Plaintiff on 17th May, 2000 pursuant to Order 41 Rule 10 of the Rules of the Supreme Court 1975. Mr. Melendez's prevarication on the issue has indeed affected his credibility and I am left with no alternative but to accept the testimony of the Plaintiff which is supported by the documentary evidence referred to earlier.

In view of the above one is tempted to ask the question why would Mr. Mora not have proceeded to prepare a draft contract between the Plaintiff and the Defendant and submit same for approval by Corimon. In fact, that is exactly what Mr. Mora did as indicated by his memorandum of 8th January, 1998 addressed to Mr. Melendez, Corimon Legal Counsel. Mr. Melendez not only denied receiving such a memorandum with the

draft contract enclosed but he does not recollect any conversation he had with Mr. Mora on “Thursday 8th, 1998” as Mr. Mora has stated in the said memorandum.

The Plaintiff also testified that she had discussed the draft contract with Mr. Mora before he faxed it to Mr. Melendez and that she was sure that the memorandum and the draft contracts were sent to Mr. Melendez. She said that she knew Mr. Mora could not have signed the contract for the Defendant unless it was approved by Corimon. The issue for determination therefore is whether the draft contract was approved by Corimon.

The Plaintiff said that both she and Mr. Mora attended a meeting in Caracas on 29th January, 1998 to discuss their work agreement and the extra judicial contract (the Contrato). She said that on that day Mr. Mora had met with Mr. Larranaga and Mr. Melendez and that they had discussed and agreed on three points in the contract of employment which Mr. Larranaga had raised for consideration. The document which reflect the understanding by the parties was duly signed and tendered into evidence as exhibit “TB 6”. That is the document that Mr. Melendez signed but admitted that he did not see the draft contract to which reference was made by Mr. Larranaga. The Plaintiff also said that after the meeting she spoke to Mr. Larranaga who had given her a copy of what was discussed in the meeting. It was then agreed that both agreements would be signed in Caracas the following day, that is, on 30th January, 1998.

On 30th January, 1998 the Plaintiff said that she received the work agreement for signing from Mr. Melendez at about 6:30 to 7:00 p.m. She said that she read the agreement and identified two errors. On the second page she said that the last line was not clearly printed and on the third page Mr. Mora was wrongly referred to as the President rather than the General Manager of the Defendant. The witness testified that

Mr. Melendez said that he would have it corrected and sent to her in Trinidad on the Monday following. She did, however, sign the extra-judicial contract. The work agreement was never sent to her as promised.

Mr. Melendez denied that he ever gave the Plaintiff any work agreement for signing on 30th January, 1998 or that he had any discussion with the Plaintiff with respect to errors or omissions of any such agreement. He admitted that discussions were held with Mr. Mora on terms and conditions of his contract of employment with the Defendant but that such discussions had nothing to do with the Plaintiff.

It is difficult to understand why Mr. Mora would seek to negotiate with Corimon the terms and conditions of his own work agreement without any reference to the Plaintiff when in fact the evidence from the Defendant itself is that Mr. Mora had been given a mandate by Corimon to negotiate the terms and conditions of the Plaintiff's employment with the Defendant. It is more than probable on the evidence before the Court that Mr. Mora was in fact negotiating the terms and conditions of employment with the Defendant not only for himself but also on behalf of the Plaintiff.

I am satisfied on the evidence that both Mr. Melendez and Mr. Larranaga acting on behalf of Corimon approved the draft contract of employment prepared by and discussed with Mr. Mora on 29th January, 1998. I also accept the Plaintiff's narrative of the events that occurred on 30th January, 1998 to the effect that the work agreement was given to her by Mr. Melendez for signing and that she did not sign because of the errors and omissions which she had pointed out to Mr. Melendez who had promised that he would have the corrected agreement forwarded to her for signing on the Monday. A promise which he never fulfilled. On these findings this Court considers it reasonable to

hold that an agreement ought to be implied from the conduct of the parties and that the terms and conditions of such an agreement are those expressed in the written but unsigned document tendered into evidence as “TB 7A”. This Court so hold.

Issue No. 3:

Whether the Contrato entered into between the Plaintiff and Corimon put an end to all claims in respect of her benefits arising out of her employment from December 2, 1991 to September 30, 1997 and that she is therefore estopped from claiming any further benefit in this regard from the Defendant.

Counsel for the Plaintiff has contended that the signing of the Contrato by the Plaintiff ought not to affect by way of compensation the Plaintiff’s working relationship with the Defendant. The Plaintiff in her evidence said that she started working with Corimon on 2nd December, 1991 and was transferred to the Defendant as Financial Controller sometime in August 1994 where she worked until her resignation in September 1998. I have already found that the circumstances of her resignation amounted to constructive dismissal.

In calculating her employment package following her dismissal the Plaintiff is claiming severance payment in accordance with paragraph 4 of the work agreement entered between the Plaintiff and the Defendant on or about January 30, 1998. The Defendant on the other hand has contended that the Plaintiff has been compensated for all her claims including severance payment owed to her by Corimon up to 30th September, 1997 by virtue of the terms and conditions of the Contrato which she executed on 30th January, 1998. The Defendant submitted that the Plaintiff’s employment with Corimon ceased with effect from September 30, 1997 and not August 15, 1994 as contended by the

Plaintiff. Mr. Sinanan further submitted that the clear intent and purport of the Contrato was to settle in amicable fashion, all claims arising out of the labour relationship between the parties, including severance for the period of service to the company, whether in Venezuela or overseas.

Was the Plaintiff an employee of the Defendant or Corimon?

The issue for determination therefore is whether the Plaintiff upon her transfer to the Defendant in August 1994 ceased to be an employee of Corimon with effect from the date of transfer and therefore became an employee of the Defendant. The letter setting out the terms of the transfer (exhibit “TB 12”) speaks of formalizing “the transfer offer as financial controller of our subsidiary in Trinidad,” and is not very helpful in that regard.

When, however, we look at the Contrato which the Plaintiff signed indicating her acceptance on January 30, 1998 we find the language used in the **FIRST** clause to be clear and unambiguous. It states:

“FIRST: the Employee has indicated that she offered her uninterrupted services to **THE COMPANY** as of the 2nd day of December, nineteen hundred and ninety one (02.12.91) until the thirtieth day of September, nine (sic) hundred and ninety seven (30.09.97), that is for a period of 5 years and 9 months.....”

The “company” referred to in the quote above is Corimon as indicated in the party’s clause of the agreement.

It is also reasonable to assume that the “uninterrupted services” relate to the Plaintiff’s contract of employment with Corimon. If the Plaintiff’s contention is tenable, that is, that she ceased to work with Corimon at the time that she was transferred to the

Defendant in August 1994, then what services are being referred to in the Contrato which she rendered to Corimon and for which she was being paid between August 1994 and September 1997?

Counsel for the Plaintiff has contended that such services will include payments made by the said corporation for part of the Plaintiff salary by Corimon for the period 1994 to 1997. In my respectful view Counsel's contention lends support to the Defendant's argument that during that period the Plaintiff continued to be an employee of Corimon. Severance payments relate to service. The Plaintiff cannot argue that she was entitled to receive severance payment from Corimon for the period August 1994 to September 1997 while not being an employee of Corimon. That is illogical!

It could not have been that the Plaintiff was not aware of the consideration for the payment of Bs 38,429,148.35 being made by Corimon in accordance with the terms of the Contrato. The Plaintiff acknowledged that during the period August 1994 and September 1997 part of her salary was paid in US currency directly by Corimon and the other portion was paid in Trinidad and Tobago currency by the Defendant. However, Mr. Melendez sought to explain this dichotomy by stating that there was an arrangement where Corimon would charge its subsidiary (the Defendant) a 3.5% of its sales to cover administrative and management expenses and that it was from that source of income that the remaining portion of salary of expatriates were paid. That evidence was never really challenged by the Plaintiff.

There is no evidence put before the Court that the Plaintiff ever queried the very bold statement in the Contrato that she was an employee of Corimon from 2nd December, 1991 to September 30, 1997 or for that matter any other of the provisions of the said

Agreement. She accepted that position by executing the agreement without any question and was paid severance accordingly. Even after signing the Contrato the Plaintiff had one (1) year to challenge the correctness of the provisions. The evidence before the Court is that she did not. She cannot now be heard to say that she was not an employee of Corimon during that period and seek to claim severance payment for the said period from the Defendant as a subsidiary of Corimon. Such a claim cannot be allowed on equitable principles. I agree with Counsel for the Defendant that it will amount to double compensation. The Plaintiff must not be allowed “to eat her cake and have it too”.

I am satisfied on the evidence that the Plaintiff remained an employee of Corimon notwithstanding her transfer as Financial Controller to the Defendant in August 1994. I am supported in that view by the language used by Corimon in its letter dated 24th September, 1997 (signed by its secretary – Martha Hernandez) addressed to the Work Permit Committee of the Ministry of National Security (see exhibit “TB 2”). In that letter the Company said:

“It is the policy of our Corporation to have its two (2) senior overseas Managers seconded from its Head Office in order to oversee and implement growth policies and strategies. These Managers are also responsible for the management of Sissons (Grenada Ltd. and Sissons, Barbados Ltd.)”

That letter was written in support of an application for work permits by Corimon in respect of Luis Mora, the General Manager and Ms. Tamara Bonnefil.

It is my understanding that **secondment** in the world of employment signifies a temporary attachment to the recipient enterprise. No doubt, the worker, as an expatriate,

is considered an employee of the company to which the worker is temporarily attached for tax and other purposes. However, in the event that the worker is repatriated for whatever reason, the worker returns to his/her employer to be re-assigned accordingly. In the instant case the Plaintiff would have returned to Corimon, her foreign employer.

Having regard to the evidence, I hold that the Plaintiff is estopped from claiming any further benefit i.e. severance payment arising out of her employment with the Defendant for the period August 15, 1994 to September 30, 1997. What then is the Plaintiff's entitlement?

Before I decide what compensation the Plaintiff is entitled to, having regard to my findings of fact I wish to take the opportunity to address the reservation expressed by Counsel for the Defendant on the case as pleaded by the Plaintiff.

Is the evidence of the Plaintiff a radical departure from the case as pleaded?

Mr. Sinanan respectfully suggested that the Court should be mindful of the principles of pleading and should be vigilant to ensure that only such evidence as relate to the matters pleaded by the Plaintiff should be considered by the Court in resolving the issues identified on the pleadings. In particular, Mr. Sinanan submitted that where a contract or agreement is to be implied, the letters, conversations and circumstances giving rise to the implication should be set out in the pleadings of the party relying on the same. Counsel relied on the following authorities to guide the Court in its deliberations:

- (1) **Phillips –vs- Phillips (1976) 4 QBD 127 at page 132-133 per Brett LJ;**
- (2) **Waghorn –vs- George Wimpey & Co. Ltd. (1969) 1 WLR 1764;**

(3) Lloyd's –vs- West Midland Gas Board (1971) 1 WLR 749.

There is nothing in the submissions of Counsel for the Plaintiff to suggest that he disagrees with the principles highlighted in the cases referred to by Mr. Sinanan. Mr. Deonarine however, argued that although the documents which gave rise to the agreement referred to in paragraph 5 of the Statement of Claim are not specifically pleaded, those documents were made available to the Defendant on discovery and they were only challenged on the ground of relevance. He contended that the Defendant was not prejudiced nor could it be argued that the Defendant was taken by surprise, when in fact, the documents were relied upon as part of the Plaintiff's case.

I am indeed grateful to Counsel for the Defendant for accurately drawing to the Court's attention the principles of Pleadings as they relate to the case as pleaded by the Plaintiff and the documents upon which the Plaintiff sought to rely in proving her case. The test was elegantly captured by Lord Thompson in the case of **Burns –vs- Dixon's Iron Works Ltd. (1961) SC 102 at page 107-108** where the learned Law Lord said:

“The Court is often charitable to records and is slow to overturn verdicts on technical grounds. But where a pursuer fails completely to substantiate the only grounds of fault averred and seeks to justify his verdict on a ground which is not just a variation, modification or development of what is averred but is something which is new, separate and distinct, we are not in the realm of technicality.”

See also the case of **Waghorn –vs- George Wimpey & Co. Ltd. (1969) 1 WLR 1764** where a similar principle was enunciated by the Court.

I do not hold the view that the documents relied upon by the Plaintiff to prove the agreement pleaded in paragraph 5 of the Statement of Claim is something “new, separate and distinct” from the case as pleaded. Particularly having regard to the fact that those documents were discovered and inspected by the Defendant and objection was taken only on the ground of relevance. I agree with Counsel for the Plaintiff that there has been no prejudice suffered by the Defendant neither could it be said that the Defendant was taken by surprise when the documents, although not specifically pleaded, were relied upon by the Plaintiff in proving her case before the Court.

What of Compensation?

By way of compensation for the Plaintiff the Defendant has admitted in paragraph 17 of its Defence that the following payments are due to the Plaintiff:

Difference in salary:

October 97 to September 98.....	US 6,924.00
Reimbursement of traveling expenses	202.00
Vacation bonus.....	10,238.00
Vacation leave benefit.....	5,476.00
Sub Total	22,840.00
Less payments made on behalf of the Plaintiff	<u>2,522.00</u>
Total	<u>20,318.00</u>

The Plaintiff has submitted that the Defendant has calculated outstanding salary up to 8th September, 1998 and not to September 30, 1998. Counsel for the Plaintiff has argued that the Plaintiff was paid her full salary by the Defendant for the month of September 1998 following her letter of resignation with the approval of the General

Manager and therefore her outstanding salary ought to be calculated to the end of September which would amount to US \$7,296.00, an addition of US \$372.00.

Further, I could find no legitimate reason why resettlement expenses ought not to be part of the Plaintiff's compensation package, particularly having regard to the agreed terms expressed in exhibits "TB 12", "TB 7(a)" and "TB 15(a)". The equivalent of one month's salary in the sum of US \$4,267.00 is therefore payable to the Plaintiff.

I have disallowed severance payments for the reasons already stated in this judgment for the period August 1994 to September 1997. The Plaintiff is entitled however to be paid severance for the period October 1997 to September 1998, that is for a period of one year. In accordance with the terms and conditions of her contract of employment she is entitled to two months salary for each year of service, that is, $\$4,237.00 \times 2 = \$8,474.00$.

When added together the Plaintiff total claim against the Defendant is therefore in the sum of US \$33,491.00. I therefore award Judgment for the Plaintiff in the sum of US\$33,491.00.

The Defendant will pay 75% of the Plaintiff's costs of the action certified fit for Counsel. Such costs are to be taxed in default of agreement.

Dated this 30th day of July, 2002

**Sebastian Ventour
Judge**

