

# THE SUPREME COURT OF THE PHILIPPINES UPHOLDS PHILIPPINE LAW IN OVERSEAS EMPLOYMENT CASE

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## 1. Summary

On 14 February 2024, the Supreme Court of the Philippines rendered its Decision in *Bison Management Corporation versus AAA and Dale P. Pernito*<sup>1</sup>, that Kingdom of Saudi Arabia (KSA)'s law that persons who are HIV positive are unfit to work is contrary to law, morals, good customs, public order, or public policy, then Philippine laws shall govern and the termination of the employee based on Human Immunodeficiency Virus (HIV) is illegal dismissal.

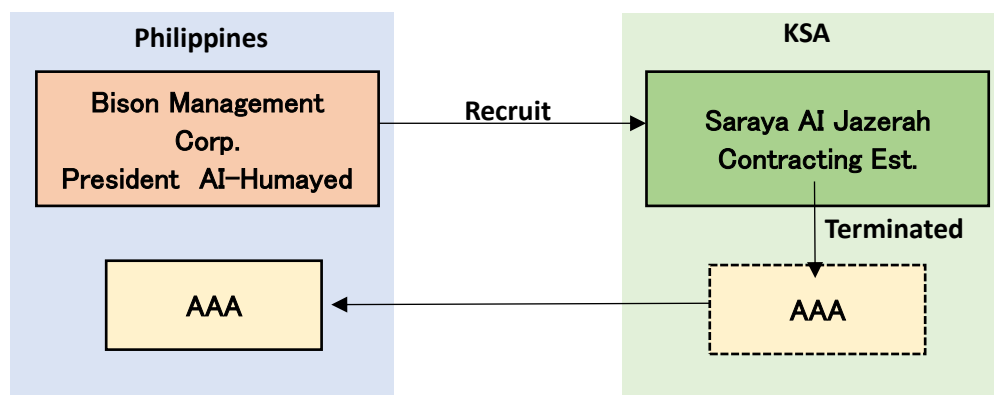


This case underscores the importance of upholding Philippine laws for foreign companies, including recruit agencies, when hiring/recruiting Filipino employees in their countries.

## 2. Background

The case revolves around the issue of illegal dismissal and discrimination against AAA, a Filipino worker who was deployed to the KSA under a two-year employment contract. Prior to AAA's deployment on 18 October 2017, he underwent the usual pre-employment screening and interview and was hired as a Cleaning Laborer. He worked in KSA for fifteen (15) months. Upon undergoing the routine medical examination, he was found positive for HIV. On this basis, his foreign employer terminated his employment and was repatriated to the Philippines on 08 February 2019.

Upon returning to the Philippines, AAA formally lodged a complaint for illegal dismissal and discrimination, non-payment of salary/wages, overtime pay, vacation leave pay, payment of the unexpired portion of the employment contract, attorney's fees, damages, and legal interest, against the recruitment agency Bison Management Corporation (Bison), Belen M. Al-Humayed (Al-Humayed) who is the President of Bison, and his foreign employer Saraya Al Jazerah Contracting Est. (Saraya).



## 3. NLRC Decision

The Labor Arbiter dismissed AAA's complaint, citing KSA's policy barring HIV positive individuals from working. Upon appeal to the National Labor Relations Commission (NLRC), the NLRC reversed the Labor Arbiter's decision. The NLRC declared that AAA was illegally dismissed, ordering Bison, Al-Humayed, and Saraya to pay AAA his (1) Salaries for the unexpired portion of his employment contract (February 8, 2019 to October 17, 2019) in the amount of SR 12,510.00; (2) Unpaid salaries for the

<sup>1</sup> *Bison Management Corporation vs AAA and Dale P. Pernito*, G.R. No. 256540, 14 February 2024.

period January 26 to February 7, 2019 in the amount of SR 762.53; (3) Vacation leave equivalent to 42 days or SR 2,423.08; (4) Moral damages in the amount of P50,000.00; (5) Exemplary damages in the amount of P50,000.00; and (6) Attorney's fees equivalent to 10% of the total monetary award. The NLRC denied Bison's motion for reconsideration. Thus, Bison filed a petition for *certiorari* to the Court of Appeals.

#### 4. Ruling by Court of Appeals

In denying the petition for *certiorari*, the Court of Appeals agreed with the NLRC that Philippine law governs the terms of the employment contract as well as the rights of the employee; that such conclusion stems from the principle of *lex loci contractus*. The CA also cited Section 35 of Republic Act No. 8504, which provides that "discrimination in any form from pre-employment to post-employment, including hiring, promotion or assignment, based on the actual, perceived or suspected HIV status of an individual is prohibited. Termination from work on the sole basis of actual, perceived or suspected HIV status is deemed unlawful." The CA ratiocinated that since the law "categorically prohibits the use of a person's HIV+ condition as a ground for dismissal," there was no valid cause to terminate AAA. Bison's motion for reconsideration was denied by the Court of Appeals.

Upon reaching the Supreme Court, Bison's argument that the Court of Appeals erred in upholding the NLRC's ruling of illegal dismissal was rejected.

#### 5. Supreme Court

The Supreme Court upheld the principle of *lex loci celebrationis*, stating that Philippine laws govern overseas employment contracts unless specific conditions for the application of foreign laws are met. In the case of *Industrial Personnel & Management Services, Inc. v. De Vera*<sup>2</sup> the Supreme Court provided the following requisites of when the parties may agree that foreign law will govern:

1. That it is expressly stipulated in the overseas employment contract that a specific foreign law shall govern;
2. That the foreign law invoked must be proven before the courts pursuant to the Philippine rules on evidence;
3. That the foreign law stipulated in the overseas employment contract must not be contrary to law, morals, good customs, public order, or public policy of the Philippines; and
4. That the overseas employment contract must be processed through the POEA.

In the case of Bison and AAA, only the first and fourth were satisfied. The second and third requisites, which are the most important are absent. First, even if Bison alleged KSA's law that persons who are HIV positive are unfit to work, said law was not proven in accordance with the Rules of Court. Since Bison failed to prove the foreign law, the doctrine of processual presumption was applied, where the foreign law is deemed to be the same as Philippines laws.<sup>3</sup> Second, the foreign law is contrary to law and public policy of the Philippines. The Supreme Court cited several cases wherein the Court had already settled that if the foreign law stipulated is contrary to law, morals, good customs, public order, or public policy, then Philippine laws shall govern.

The Supreme Court has consistently declared that a contractual agreement does not prevent the applicability of Philippine law, more so if said contractual stipulation is contrary to Philippine laws. In as early as the year 1990, the Supreme Court had also proclaimed the labor relationship between an OFW and his or her foreign employer as "much affected with public interest and that the otherwise applicable Philippine laws and regulations cannot be rendered illusory by the parties agreeing upon some other law to govern their relationship."<sup>4</sup>

Section 49(a) of Republic Act No. 11166, or the "Philippine HIV and AIDS Policy Act", makes it unlawful for an employee to be terminated from work on the sole basis of their HIV status, the relevant provision provides:

SEC. 49. Discriminatory Acts and Practices. -The following discriminatory acts and practices shall be prohibited:

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<sup>2</sup> *Industrial Personnel & Management Services, Inc. v. De Vera*. G.R. No. 205703, 07 March 2016.

<sup>3</sup> *EDI-Staffbuilders International, Inc. v. NLRC*, G.R. No. 145587, 26 October 2007.

<sup>4</sup> *Pakistan International Airlines Corporation v. Hon. Blas F. Ople*, G.R. No. 61594, 28 September 1990.

- (a) Discrimination in the Workplace. - The rejection of job application, termination of employment, or other discriminatory policies in hiring, provision of employment and other related benefits, promotion or assignment of an individual solely or partially on the basis of actual, perceived, or suspected HIV status[.]

Thus, applying the foregoing laws and jurisprudence, the Court upheld the NLRC's decision.

## 6. Remarks

This case underscores the importance of upholding Philippine laws, particularly in the context of overseas employment. It serves as a reminder that contractual agreements cannot supersede Philippine laws, especially if the contract involves matters of public interest and policy.

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