Ramessur v CIM Finance

2023 IND 53

CN555/14

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Nayantara RAMESSUR

Plaintiff

v/s

CIM Finance

Defendant

JUDGMENT

By way of *Proecipe*, the Plaintiff is claiming from the Defendant Company **the total sum of Rs1 010 600/- representing 03 Months' Wages As Indemnity In Lieu Of Notice and Severance Allowance for the unjustified termination of her employment by the Defendant Company, together with 12% Interest and Costs as from the entry of the Plaint.**

Particulars dated 01-07-16 (unsigned) were filed on behalf of the Plaintiff.

The Defendant Company has denied the said Claim in its Plea, and has prayed for the present action to be dismissed.

Each Party was assisted by Learned Counsel, and the Proceedings were held partly in English and partly in Creole.

Case For The Plaintiff

It was the case for the Plaintiff that her employment had been unlawfully and illegally terminated by the Defendant Company.

Case For The Defendant Company

The Defendant Company denied the Plaintiff's Claim, and averred that the Plaintiff's employment had been terminated due to the Plaintiff's misconduct.

Analysis

The Court has duly analysed all the evidence on Record and all the circumstances of the present matter, and the Court has given due consideration to the Submissions, to the Further Submissions, and to the Written Submissions, of each Learned Counsel.

The Court has duly considered all the documents produced in the course of the Proceedings.

Not In Dispute

It was common ground between the Parties that:

1) The Plaintiff was in the continuous employment of the Defendant Company as Senior Accounts Clerk with the Defendant Company between 02-08-93 and 29-04-13;
2) The Plaintiff was working about 40 hours per week, with monthly basic wages of Rs16300/;
3) The Plaintiff was suspended from work with pay with immediate effect as from 27-03-13 by way of letter dated 27-03-13;
4) The Plaintiff was convened to a Disciplinary Committee to be held on 24-04-13 by way of letter dated 18-04-13;
5) The Plaintiff's employment was terminated by the Defendant Company on 29-04-13 by way of letter dated 29-04-13; and
6) The Defendant Company is a Company dealing in the Financial Sector.

Was The Plaintiff's Employment Unlawfully And Illegally Terminated?

Reason/s for termination of the Plaintiff's employment

Given the Plaintiff's employment was terminated on 29-04-13, the applicable Law at the relevant time was the **Employment Rights Act** (hereinafter referred to as **ERA**).

The starting point to determine whether the Plaintiff's employment was illegally and unlawfully terminated is the Letter of Termination (Doc. P4), in light of the principles set out in the Authority of **Lateral Holdings Ltd v Murdamootoo [2021 SCJ 19]**:

> The reason given by the appellant for the summary dismissal in the letter of termination assumes all its importance when one bears in mind that the burden is on the employer to show that the termination was justified.
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> […]
>
> **Dalloz, Répertoire de Droit du Travail, Rubrique Contrat de Travail à Durée Indéterminée : Rupture et Conditions de Licenciement pour Motif Personnel** –
>
> > C – Fixer les limites du litige
> > […]
> > 2 o – Pouvoir limite des juges du fond
> >
> > 117. En cas de contestation sur le caractère bien fondé de la rupture, les juges du fond doivent tout d'abord rechercher si la lettre de licenciement contient un motif de rupture du contrat de travail, énoncé de façon claire et explicite. Si tel est le cas, il leur appartient ensuite d'examiner si les motifs énoncés présentent ou non un caractère réel et sérieux (V. infra, no 165 et s.).

In the present matter, the Termination Letter (Doc. P4) mentions that the "charges have been proved" and that the Plaintiff is being "informed that on the grounds of misconduct the Company has decided to terminate [her] contract of employment with immediate effect."

The Letter of Termination (Doc. P4) mentions that the charges have been proven, without specifying same. However, given the Suspension Letter (Doc. P3) mentions only two charges, it logically follows that the Plaintiff could but have understood that the charges referred to in the Termination Letter (Doc. P4) were the two charges contained in the Suspension Letter (Doc. P3), and the Court therefore finds that the Plaintiff was informed in clear terms on the basis of what misconduct her employment was being terminated, and hence "[l]e motif de rupture du contrat de

travail, [était] énoncé de façon claire et explicite. "(**Dalloz (supra)** cited in **Lateral Holdings (supra)**).

The Suspension Letter (Doc. P3) sets out the two reasons invoked by the Defendant Company to justify its decision to terminate the Plaintiff's employment with immediate effect for misconduct:

1) Since August 2012, the Plaintiff had actively canvassed her colleagues in CIM Finance to invest in a deposit scheme, which activity was incompatible with her full-time employment as Senior Accounts Clerk at the Defendant Company, and was not in line with the Guidelines of the Employee Handbook (Doc. D5), specifically sections 5.6 and 5.8 relating to Conflict of Interest and Outside Employment respectively; and

2) Since August 2012, for those employees who had invested in the said deposit scheme following her canvassing, the Plaintiff had, during Office hours and on Office premises, handled cash transactions on behalf of White Dot International Consultancy Ltd (hereinafter referred to as WDICL).

In the Authority of **Sotravic v Chellen [2021 SCJ 425]**, the Court was of the view that "[w]e need […] to be guided by the following extract from "**Introduction au Droit du Travail Mauricien –1/Les Relations Industrielles de Travail" (2ème édition –2009)** at page 365 which refers to termination for misconduct under the ERA –

> "Le législateur définit la notion de 'misconduct' essentiellement par rapport à sa gravité. En effet un 'misconduct' pouvant justifier un licenciement sans indemnité de licenciement doit être telle que l'employeur "cannot in good faith take any other course". II existe en effet divers degrés de faute. Au bas de l'échelle il y a les fautes légères qui ne sauraient justifier un licenciement et entraîneraient en cas de licenciement le paiement de l'indemnité de licenciement. La faute n'étant que légère l'employeur aurait dû sanctionner l'employé autrement que par le licenciement. Le deuxième degré de faute est la faute sérieuse. Bien que la faute justifie ici la sanction ultime du licenciement, elle n'est pas considérée comme suffisamment grave pour écarter le paiement de l'indemnité de licenciement. Au sommet de la hiérarchie des fautes nous retrouvons les fautes graves, les cas de 'gross misconduct', qui elles justifient un

> "summary dismissal", c'est-à-dire sans préavis et donc éventuellement sans indemnité de licenciement. L'appréciation de la gravité de la faute se détermine non seulement en fonction de la faute en elle-même mais également en fonction de toutes les circonstances de l'espèce."

Charge No. 1

In relation to the first charge, the Plaintiff's case was to the effect that she was just helping her colleagues, had taken no active role, and had not canvassed Mrs Shamila Purmanund (hereinafter referred to as Mrs Purmanund) and Mrs Cavoordin, but had only shared her experience with her colleagues.

The Court is of the considered view that the evidence establishes otherwise, for the reasons given below.

First, the Plaintiff introduced WDICL to her colleagues.

Mrs Cavoordin deponed in Court as to how in August 2012 she heard about WDICL from the Plaintiff, whom she had known for about 15 years as a colleague at the relevant time, and who approached her and told her that there was a Company, of which her Brother was a Director, which offered interesting dividends, and that many people in the Defendant Company had invested therein and had become millionaires.

Mrs Cavoordin denied that she was the one who approached the Plaintiff to hand her money over to Agents of WDICL on her behalf, and added that she did not even know about WDICL.

Mrs Purmanund deponed to the effect that the Plaintiff presented WDICL to her, and denied being the one who approached the Plaintiff for WDICL's phone number, and that the Plaintiff had given her Brother's number as she did not have WDICL's number.

In cross-examination, Mrs Purmanund admitted that she was the one who had asked the Plaintiff for WDICL's phone number, but maintained that the Plaintiff had talked to her about WDICL, and no one else.

Second, the Plaintiff highlighted her Brother's involvement with WDICL.

Mrs Cavoordin explained that the Plaintiff approached her and told her that her Brother was a Director there.

The Plaintiff gave her Brother's phone number to Mrs Purmanund, not that of WDICL, and Mrs Purmanund stated in Court that the Plaintiff had told her that her Brother was a Director at WDICL, but that she had never dealt with the Plaintiff's Brother, maintaining that she had dealt mainly with the Plaintiff.

By doing so, it appears that the Plaintiff was relying on the fact that her Brother was working for WDICL as Director, to lull Mrs Purmanund and Mrs Cavoordin into a false sense of security.

Third, the Plaintiff represented to her colleagues, including Mrs Cavoordin and Mrs Purmanund, that she herself had invested in WDICL.

In the course of her testimony, the Plaintiff at first stated that she had invested in WDICL, which she got to know through her Brother, one Sanjeev Lutchmun, explaining that she had found the offers as regards Interest Rates more interesting than the ones practiced by Banks, and then stated that she did not know WDICL as she had invested through her Brother.

The Court is of the considered view that the said contradiction in the Plaintiff's case is very telling, inasmuch as the Plaintiff at first stated that she had invested in WDICL, implying thereby that she knew WDICL personally, and then that she did not know the said WDICL, as she had invested through her Brother.

In cross-examination, the Plaintiff attempted to explain her statement that she did not know WDICL, by saying that what she had meant was that she had invested through her Brother who had come to see her in 2011 at her place, when she knew WDICL as "Proframe Genius", and that she had never set foot at WDICL.

The Plaintiff added that she knew nothing of WDICL, except that she had invested her money therein.

All these various versions given by the Plaintiff leave doubts as to the Plaintiff's version.

It is also interesting to note that the Plaintiff stated that Mrs Purmanund had contacted WDICL directly through her Brother.

It stands to reason that if the Plaintiff considered that Mrs Purmanund had contacted WDICL directly through her Brother, the same goes for the Plaintiff, who cannot be heard to say that she did not know WDICL because she had invested through her Brother.

Be that as it may, the Plaintiff admitted in Court, in unequivocal terms, that she had shared her experience of her investment in WDICL with her colleagues, including Mrs Purmanund and Mrs Cavoordin.

It is also worth noting that the Plaintiff had been working at the Defendant Company since 1993, which she herself averred was a Company dealing in the Financial Sector (paragraph 2 of the *Proecipe*).

The Plaintiff was initially employed by the Defendant Company as Credit Clerk as from 1993 (Doc. D4), and was working as Senior Accounts Clerk at the Defendant Company at the relevant time, that is in 2013, and hence reckoned about 19 years of Service with the Defendant Company as at 2013.

From all the above, to all intents and purposes, it is clear that the Plaintiff was a senior employee in her Department, having a lot of experience in the said field.

The Court has noted the Plaintiff's explanation in cross-examination that she had not thought about the implications, i.e. whether WDICL was a competitor of the Defendant Company, as she had just thought about the return on her investment.

Be that as it may, the fact that the Plaintiff was working for CIM Finance, which was involved in the Financial Sector and the fact that the Plaintiff was a senior employee in her Department, must have weighed in the balance when the Plaintiff shared her experience with her colleagues.

Fourth, the Plaintiff gave details about the returns on investment offered by WDICL.

Mrs Cavoordin explained that the Plaintiff approached her and told her that WDICL gave good dividends, and that she, i.e. Mrs Cavoordin, invested twice, and was given two Contracts (Docs. D7 and D8) in return.

Mrs Cavoordin went on to explain that she invested a second time in WDICL as the Plaintiff had told her that there was a preferential return rate which was higher than the initial return rate of her first investment.

Mrs Purmanund stated in Court that the Plaintiff explained to her that WDICL yielded dividends, and that it was a reliable Company, which was what convinced her to invest (Doc. D10).

Fifth, the Plaintiff admitted having called her Brother to ask him to revert back to Mrs Purmanund about her application with WDICL, and that Mrs Purmanund thanked her when she got a reply.

This was denied by Mrs Purmanund in Court, but this admission on the part of the Plaintiff amounts to an *aveu judiciaire*, on which the Court is bound to act.

The Plaintiff tried to explain that she did call her Brother on behalf of Mrs Purmanund to help her colleague, but the Court finds the said explanation unconvincing to say the least, in light of all the factors highlighted above.

Sixth, the Plaintiff was the one assisting her colleagues for their transactions.

Mrs Cavoordin stated that both times, she invested through cash transactions with the Plaintiff, and that she was getting her dividends in cash each month from the Plaintiff.

Mrs Purmanund stated that she had remitted her money in cash to the Plaintiff personally and the Plaintiff then gave her a Contract for her investment, maintained that she had dealt mainly with the Plaintiff, and that the Plaintiff accompanied her to a car for her money to be remitted to the Agent of WDICL, for her second investment.

Mrs Purmanund further explained that her dividends were paid into Bank.

The reason given by the Plaintiff for accompanying Mrs Purmanund was that they were colleagues, and also as Mrs Purmanund did not know the Agent, and as the said Agent was the Plaintiff's Nephew, she, i.e. the Plaintiff, would be able to identify him.

And the Plaintiff confirmed that this occurred on her work premises, during Office hours, albeit during Lunchtime, and admitted in the course of cross-examination that WDICL was a competitor of the Defendant Company, as both sold Financial Services.

From all the above, it is clear that far from merely assisting her colleagues, the Plaintiff was involved in handling cash transactions and remitting not only contracts but also money to and from her said colleagues, and hence was clearly taking an active role in the process.

And seventh, the Plaintiff's actions and words were instrumental in persuading Mrs Cavoordin and Mrs Purmanund in investing in WDICL.

Mrs Cavoordin admitted that it was her decision whether to invest her money, and if so, where, and that the Plaintiff had not told her to invest in WDICL, had not been forceful ("*brusque*") with her, and had not harassed her to invest in WDICL. But she also stated in plain words in Court that the Plaintiff had convinced her to invest, that she trusted the Plaintiff as she had known the Plaintiff well for 15 years, as the Plaintiff worked at the Defendant Company, as the Plaintiff was a hard worker, and as the Plaintiff had told her that many people at the Defendant Company had invested in WDICL, and as the Plaintiff had told her about the high dividends, which she knew were rates not practiced by Banks.

The Court takes Judicial Notice of the fact that canvassing is generally understood to entail the initiation of direct contact with a person, for instance, and giving information and trying to persuade the person to do/buy something for instance, and does not necessarily include any harassment, or forceful action, to get the wanted result. The Court is therefore of the considered view that the issue of harassment has no bearing on the determination of the present matter.

Mrs Purmanund accepted that she had invested her money as she knew she would get good dividends, and that she would not have invested, were the returns not as good, and added that the Plaintiff had called her several times to convince her to invest, and also explained in Court how she was convinced to invest by what the Plaintiff had told her about WDICL, and explained

to her that her Brother's Company was giving good dividends, that it was a genuine company, and presented WDICL to her in such a way as to convince her to invest.

In light of all the above, it has been established that Mrs Cavoordin and Mrs Purmanund would not have invested in WDICL, but for the Plaintiff's actions and words, and that the Plaintiff, who was working as Senior Accounts Clerk at the relevant time with the Defendant Company, was thereby canvassing her said colleagues, and could not have been ignorant of the conflict of interest arising from her canvassing her colleagues to invest in WDICL.

The Plaintiff admitted that the Defendant Company was in the Financial Services Sector, was a public Company listed at the Stock Exchange, was hence regulated by the Financial Services Commission, and had to abide by strict rules, otherwise its Licence would be cancelled. The Plaintiff also admitted that the Defendant Company sold financial products, and that WDICL offered Financial Services and was hence a competitor of the Defendant Company.

In light of all the above and all the evidence on Record, the Court is of the considered view that it has been established that the Plaintiff's activity of canvassing her colleagues as highlighted above, was incompatible with her full-time employment and that the Plaintiff, through such canvassing, was associated with an occupation which was in competition with the activities or business of the Defendant Company (see paragraph FULL TIME EMPLOYMENT of (Doc. D4)).

The Court has duly assessed the demeanour of the Plaintiff, that of Mrs Cavoordin and Mrs Purmanund, and that of the Representative of the Defendant Company.

The Plaintiff unsuccessfully attempted to portray herself as an ingenue, who only tried to help her colleagues.

From all the answers given by the Plaintiff herself, she kept changing her version, at first having invested in WDICL, albeit through her Brother, and then not knowing WDICL at all, and eventually stating that what she had meant when she had said she did not know WDICL was that she had never set foot there and that she knew it as Profame Genius.

The Court has also noted that it was submitted that there was no reason for the Plaintiff to have canvassed Mrs Cavoordin and Mrs Purmanund. But the fact remains that the Plaintiff readily

conceded having shared her experience with the said two colleagues, having put at least one of them in contact with WDICL, and having accompanied one to remit the money to the Agent of WDICL, and having taken the money of the other.

True it is that the Representative of the Defendant Company conceded it had no evidence to the effect that the Plaintiff was an Agent of WDICL, but all the factors highlighted above establish in a cogent manner that the Plaintiff was taking an active role as regards the said investments of Mrs Cavoordin and Mrs Purmanund, and further, had the Plaintiff not been acting on behalf of WDICL, there would have been no reason for the Plaintiff to be so involved with the transactions of her said two colleagues.

On the other hand, Mrs Cavoordin readily answered all questions put to her in a straightforward manner, and maintained throughout the Proceedings that the Plaintiff had approached her about WDICL.

The Court is satisfied that Mrs Cavoordin was a Witness of Truth, she even admitting having taken part in a cash transaction on her workplace at the relevant time, and that she would not have reported the matter to her Superior had she known she had done something against the Defendant Company's Policy.

The Court is also satisfied that Mrs Purmanund was truthful Witness, who deponed in a coherent manner, and maintained her version throughout the Proceedings.

The Court has noted that Mrs Purmanund contradicted herself by at first denying being the one who approached the Plaintiff to get WDICL's number, and then conceding having done so.

The Court is however of the considered view that this contradiction does not significantly undermine Mrs Purmanund's credibility, who otherwise had a consistent version throughout the Proceedings.

Both Mrs Cavoordin and Mrs Purmanund deponed along the same lines, and corroborated each other.

The Court has noted the Submissions and Written Submissions of Learned Counsel for the Plaintiff to the effect that the possibility of collusion and lies cannot be excluded as regards Mrs Cavoordin and Mrs Purmanund.

No evidence has been adduced to substantiate the said Submission, and further, at no stage were the said Witnesses for the Defendant Company cross-examined on the said issue.

There is no reason for the Court to doubt the testimony of Mrs Cavoordin and Mrs Purmanund, and the Court finds that it can safely act on same.

The Representative of the Defendant Company deponed on the basis of what was contained in his File, as he had no personal knowledge of the present matter, his having joined the employment of the Defendant Company in 2019, that is about 06 years after the Plaintiff's employment had been terminated.

In light of all the factors highlighted above, the Court is of the considered view that it has been established that the Plaintiff had canvassed Mrs Cavoordin and Mrs Purmanund to invest in WDICL, which was a competitor of the Defendant Company, and which canvassing was incompatible with her full-time employment as Senior Accounts Clerk at the Defendant Company and was not in line with the Guidelines of the Employee Handbook (Doc. D5), specifically sections 5.6 and 5.8 the Employee Handbook (Doc. D5).

Charge No. 2

As regards the second charge, the Court has found established that the Plaintiff canvassed Mrs Cavoordin, and in Court, the Plaintiff admitted in clear terms having taken Mrs Cavoordin's money which she was investing in WDICL, to remit same to WDICL's Agent, who then in turn remitted to her Mrs Cavoordin's Contract, which she remitted to Mrs Cavoordin at the Defendant Company.

The Plaintiff explained she felt stuck between her Nephew, who worked at WDICL, and Mrs Cavoordin, who was her colleague, and only did so to help them, in good Faith, otherwise she would have felt bad.

From all the above and all the evidence on Record, it is clearly established that the Plaintiff took money during Office hours and on Office premises, from Mrs Cavoordin, which she was investing

in WDICL, to remit same to WDICL's Agent, and thereby, handled cash transactions on behalf of WDICL during Office hours and on Office premises.

In light of all the evidence on Record, all the circumstances of the present matter, and all the factors highlighted above, the Court is of the considered view that the actions of the Plaintiff in relation to both charges amounted to misconduct, which justified her dismissal.

Was termination of the Plaintiff's employment the only option open to the Defendant Company in good Faith?

The question to be addressed at this stage, is whether, in good Faith, summary dismissal of the Plaintiff was *"the only option" (***Bissonauth v The Sugar Fund Insurance Bond [2007] UKPC 17** and **United Docks Ltd v De Spéville [2018 PRV 48]**).

The Court is alive to the fact that the Authorities of **United Docks (supra)** and **Bissonauth (supra)** relate to the **Labour Act**, whereas the applicable Law in the present matter is the **ERA**.

The Court is however of the considered view that, given the philosophy, rationale, and underlying principles behind the **Labour Act** and the **ERA** are very similar, and given the wording **s. 32(1)(b)(i) of the Labour Act** and that of **s. 38(2)(a)(i) of the ERA** are very similar, the above-mentioned principles relating to the **Labour Act** apply *mutatis mutandis* to the **ERA**.

There is no mention in the Termination Letter (Doc. P4) that the Defendant Company could not in good Faith, take any other course of action.

Whilst this was not made a live issue in the course of the Proceedings, the Court is of the considered view that the said words are of fundamental importance, given it is an express provision of **s. 38(2)(a)(i) of the ERA** that no Employer shall terminate an employee's employment for reasons related to the employee's misconduct unless the employer cannot in good Faith take any other course of action.

The use of the word "shall" in the said section indicates the clear intention of the Legislator (**Curpen v The State [2008 SCJ 305]**) that this is a statutory obligation placed on the employer.

The mandatory nature of these provisions of the **ERA** is understandable, given one of the objectives of the **ERA** is to protect employment [1], and also given the fact that termination of employment is the ultimate sanction, it affecting the livelihood of the employee.

The **ERA** is a "*legislation […] d'ordre public*" [2] and the said provisions of the **ERA** are *des* "*dispositions imperatives*" [3], and hence cannot be ignored.

As succinctly put by Dr Fok Kan (supra), "[a]vec [l]es dispositions [du ERA] le législateur prive ainsi "the employer of the right which he had at common law of terminating the employment of his worker at any time and for no reason, simply by giving him appropriate notice" […]".

That being said, the Court is of the considered view that the duty placed on the employer to act in good Faith, when it comes to the termination of employment of an employee, is one of substance rather than one of form.

The Court finds the following passage from the Authority of **Lih Thoy Lim Yu Choy v Rey And Lenferna Limited** **[2021 SCJ 252]** pertinent:

> In an action for summary dismissal, the burden rests upon the employer to establish that the acts and doings of his employee amount to misconduct and that the misconduct is such that he cannot in good faith take any other course of action than terminate his employment. Such a situation would only exist where the misconduct is tantamount to "faute grave" or "faute lourde" justifying the worker's dismissal without the payment of severance allowance.
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> In **Deep River Beau Champ Ltd v Beegoo** **[1988 SCJ 432]** it was held that whether misconduct may entail the termination of employment depends on the facts of each case. The determination of the question of justified dismissal depends essentially on the degree and seriousness of the misconduct.

[1] **Introduction au droit du travail mauricien (supra)** at page 5
[2] Ibid, p. 5
[3] Ibid, p. 1

> Furthermore, it is relevant to cite the decision of the *Chambre Sociale of the Cour de Cassation* **(Soc. 26 février 199, 88-44.908, Bulletin 1991 V No 97 p.60)** where "faute grave" was defined as "une faute résultant d'un fait ou d'un ensemble de faits imputable au salarié, constituant une violation des obligations du contrat de travail ou des relations de travail, d'une importance telle qu'elle rend impossible le maintien du salarié dans l'entreprise pendant la durée du préavis".

In the present matter, the Defendant Company explained that given it was a listed Company, given the field it operated in, and more importantly, given it was regulated by the Financial Services Commission, it had to protect itself and could not allow itself to be associated in any way with any scheme that may be fraudulent, otherwise it might run the risk of having its license revoked, and hence it had no choice but to terminate the Plaintiff's employment in light of the Plaintiff's actions.

In effect, the Plaintiff had by her said actions, breached the Trust the Defendant Company had placed in her as its senior employee.

In light of all the above and all the evidence on Record, the Court is of the considered view that the Defendant Company has established that the "ensemble de faits imputable [à la Plaignante], constitua[ient] une violation des obligations du contrat de travail […], d'une importance telle qu'elle rend[ait] impossible le maintien d[e] [la Plaignante] dans l'entreprise pendant la durée du préavis", and that it had no choice, in good Faith, but to terminate the Plaintiff's employment, in line with **s. 38(2)(a)(i) of the ERA**.

Was the Plaintiff notified of the charges against her within the statutory delay?

The Court now addresses the question of whether the Plaintiff was notified of the charges against her within 10 days of the Defendant Company becoming aware of her misconduct.

Although this was not made a live issue by the Plaintiff, the Defendant Company adduced evidence to the effect that it had carried out an enquiry into the present matter before levelling charges against the Plaintiff.

The Court therefore proceeds to consider the provisions of **s. 38(2)(a)(iii) of the ERA** [4].

It is an express provision of **s. 38(2)(a)(iii) of the ERA** that no employer shall terminate an employee's employment for reasons related to the employee's misconduct unless the employer has notified the employee of the charges against him within 10 days of the employer becoming aware of the employee's misconduct.

The word "shall" has been used in **s. 38(2)(a)(iii) of the ERA**, and the said word may be read as imperative, pursuant to **s. 5(4)(a) of the Interpretation And General Clauses Act (hereinafter referred to as IGCA)**.

The Court is of the considered view that the words used in **s. 38(2)(a)(iii) of the ERA** are clear and unambiguous, and indicate clearly the intention of the Legislator to make such time limit mandatory.

And "h]aving regard to principles underlying statutory interpretation, when the words used are unambiguous the clear intention of the legislator must be put into effect for the legislator does not legislate in vain." (**Curpen v The State [2008 SCJ 305]**)

As to the question of when an employer becomes aware of an Employee's misconduct, as per the principles set out in the Authority of **Chellen v Mon Loisir S.E. [1971 MR 1980]** "[…] the starting point of the seven days should not be wholly subjective, as it would be too easy for any employer wishing to evade the provisions of the law to decide arbitrarily when he becomes aware of a worker's misconduct. This starting point should be assessable with some certainty but the circumstances of each case must be taken into consideration."

The said decision of **Chellen v Mon Loisir (supra)** was in relation to the now repealed **Labour Act**, but the Court is of the considered view that the philosophy and rationale underlying the **ERA** are very similar to the now repealed **Labour Act**, and that hence, the said principles set out above apply *mutatis mutandis* to the present matter.

[4] **Berlinwasser International AG Mauritius v Benydin [2017 SCJ 120]** cited with approval in **Bathfield v Le Petit Morne Ltee [2018 SCJ 421]**

In the present matter, the Plaintiff was suspended on 27-03-13, by way of letter dated 27-03-13, and given the contents of the said letter (Doc. P2), as the Defendant Company suspected that the Plaintiff had "actively canvassed [her] colleagues to invest in a deposit scheme and such activity [was] incompatible with [her] full-time employment as Senior Accounts Clerk at the Defendant Company as provided in the Employee Handbook (Doc. D5).

And from a perusal of the Charge Letter (Doc. P3), the first charge is in essence the same as the first paragraph of the Suspension Letter (Doc. P2), save that it *inter alia* specifically mentions paragraphs 5. 6. and 5.8 of the Employee Handbook (Doc. D5).

The second charge is entirely new, and appears nowhere in the Suspension Letter (Doc. P2).

That being said, the Representative of the Defendant Company explained in Court that the Defendant Company had carried out an enquiry into the matter, but at no stage in the Letter of Suspension (Doc. P2) did the Defendant Company mention that it was going to carry out an enquiry into the matter. Further, no evidence was adduced as to when the enquiry was completed.

The date of completion of the enquiry would have been crucial for the Court to determine from what date the Defendant Company became aware of the Plaintiff's misconduct.

Be that as it may, true it is that **s. 64(3) of the Workers' Rights Act** (hereinafter referred to as **WRA**) now provides that "[b]efore a charge of alleged misconduct is levelled against a worker, an employer may carry out an investigation into all the circumstances of the case and the period specified in subsection (2)(a)(i) or (b)(i) shall not commence to run until the completion of the investigation" [5].

The applicable Law at the relevant time, however, was the **ERA**, and therefore, in the absence of any express statutory provisions to the contrary, the time started to run from the moment the

[5] **S. 64(2)(a)(i) of the WRA** provides that subject to subsection (3), no employer shall terminate a worker's agreement for reasons related to the worker's alleged misconduct, unless the employer has, within 10 days of the day on which he becomes aware of the alleged misconduct, notified the worker of the charge made against the worker.

Defendant Company became aware of the Plaintiff's misconduct and not on completion of the enquiry.

It is therefore clear, from all the above, that the Defendant Company became aware of the Plaintiff's misconduct, at the very least in relation to charge 1 (Doc. P2), on 27-03-13, and ought to have informed the Plaintiff of the said charge against her within 10 days of it becoming aware of such misconduct, i.e. within 10 days from 27-03-13 (Doc. P2), that is by latest 06-04-13 [6].

As is apparent from the Charge Letter (Doc. P3), however, the Plaintiff was informed of the charges against her on 18-04-13, that is 22 days after the Defendant Company became aware of such misconduct, at least in relation to charge 1.

The mandatory nature of the time limits set out in the **ERA** has been authoritatively set out in **Mauvilac Industries Ltd v Ragoobeer [2007] UKPC 43**.

The Court is alive to the fact that the Authority of **Mauvilac Industries (supra)** related to the dismissal being a day late, whereas in the present matter, the issue is the notification of the charges to the Plaintiff.

The Court is however of the considered view that the principles set out in **Mauvilac Industries (supra)** as to the mandatory nature of the time limits in the **ERA** apply *mutatis mutandis* to the present matter.

"This is not a time limit which it is in the power of the courts to extend and it is based on sound principles. Both from the point of view of the worker and that of the employer, it is in their best interests that the contractual bond be severed within a definite period of time when the continued employment of the worker becomes impossible through his proven misconduct." (**Mahatma Gandhi Institute v Mungur [1989 SCJ 379]** cited with approval in **Mauvilac Industries Ltd v Ragoobeer [2006 PRV 33]**).

True it is that **Mahatma Gandhi Institute (supra)** and **Mauvilac Industries (supra)** related to the termination of employment, as opposed to the notification of the charge, but the Court is of

[6] **S. 38(1)(b) of the Interpretation And General Clauses Act**

the considered view that the same principle ought to apply *mutatis mutandis* to the present matter, as it is in the best interests of both the employer and the employee to know with certainty the delay within which a charge, if any, is to be levelled against the employee. Otherwise, the employee could potentially run the risk of being suspended and not knowing if, and if so, when, a charge might be leveled against him. This uncertainty would not conducive to sound employment relationships.

In light of all the evidence on Record, all the circumstances of the present matter, and all the factors highlighted above, the Court is of the considered view that it has been established that the Defendant Company failed to comply with **s. 38(2)(a)(iii) of the ERA**, which as highlighted above, is a "*legislation[…] d'ordre public*" [7] and the said provisions of the **ERA** are des "*dispositions imperatives*" [8] which cannot be derogated from, and the Court is therefore of the considered view that the Plaintiff's employment was terminated in breach of **s. 38(2)(a)(iii) of the ERA**, and is therefore deemed to be unlawful.

Miscellaneous

Documents

The Court has noted the following:

1) The Plaintiff's name is "Nayantara Ramessur" as per the *Proecipe*;
2) The name of "Ramessur Nayan Tara" appears on (Docs. P1 and D6);
3) The name of "Tara Nayan Ramessur" appears on (Docs. P2, P3, P4, and D3);
4) The name of "Tara Ramessur" appears in (Docs. D1 and D2); and
5) The name of "Nayan Tara Lutchman" appears on (Doc. D4).

Be that as it may, given the Identity of the Plaintiff was not put in issue, and given the said documents were not challenged, the Court acts on the basis that all the said names relate to one and the same person, i.e. the Plaintiff, and that all the said documents relate to the Plaintiff.

[7] **Introduction au droit du travail mauricien (supra)** at p. 5, cited with approval in the Authority of **Atchia v Air Mauritius Ltd [2021 SCJ 206]**
[8] Ibid, p. 1

The Court also notes that the name of “Maya Cavoordin” appears on (Docs. D2, D3, and D9), whereas the name of “Cavoordin Sanbaghum Poolay” appears on (Docs. D7 and D8).

Be that as it may, given the Identity of Mrs Cavoordin was not put in issue, the Court acts on the basis that the said two names relate to one and the same person (referred to in the present Judgment as Mrs Cavoordin) and that the said documents relate to Mrs Cavoordin.

It appears also that (Docs. D1 and D11) are the same documents, and that (Docs. D2 an D9) are the same documents.

WDICL

The Court has noted the Plaintiff’s testimony to the effect that she was a Victim of WDICL also, but the Court is of the considered view that this has no bearing on the determination of the present matter.

Further, whether many Members of the Plaintiff’s Relatives worked at WDICL, whether there was a Police Enquiry into WDICL, and whether there was/is a Police case against the Plaintiff’s Brother, have no bearing on the determination of the present matter.

The Court is also of the considered view that the fact that Mrs Cavoordin and Mrs Purmanund reported the matter to their Superior at the Defendant Company, to the Police, to the Bank of Mauritius, and/or the Mauritius Revenue Authority when they heard that WDICL had crashed on the radio, is irrelevant to the determination of the present matter, as all this occurred after the matters under consideration in the present matter.

Mrs Cavoordin and Mrs Purmanund

It was put to the Mr Azam Emrith (hereinafter referred to as the Defendant’s Representative) that the Defendant Company had taken no action against Mrs Cavoordin, although she had been involved in a cash transaction on her workplace.

Mrs Purmanund confirmed that the Defendant Company had taken no action against her, although she had been involved in a cash transaction on her workplace.

The Court is of the considered view that this is irrelevant to the determination of the present matter.

And the Court has acted solely on the respective testimonies of Mrs Cavoordin and Mrs Purmanund, and not on their respective statements (Doc. D9 and Doc. D11) produced by Mrs Cavoordin and Mrs Purmanund respectively.

Report (Doc. D3) of the Chairperson of the Disciplinary Committee and Particulars

The Court is of the considered view that the Report (Doc. D3), cannot, with all due respect, be acted upon, as it was a Report solely for the consumption of the Employer.

Particulars

Particulars were filed on behalf of the Plaintiff, but no reference was specifically made to same in the course of the Trial, and Learned Counsel for the Plaintiff did not address the Court on same.

On the other hand, Learned Counsel for the Defendant Company addressed some of the issues raised in the Particulars in his Submissions and Written Submissions.

Be that as it may, given Learned Counsel for the Plaintiff did not address the Court on the said Particulars, and bearing in mind that same are not signed, the Court finds that it would not be judicious to act on the basis of same, and hence does not act on same.

Conclusion

In light of all the evidence on Record, all the circumstances of the present matter, and for all the reasons given above, the Court finds that the Plaintiff's employment was terminated unlawfully by the Defendant Company for being in breach of **s. 38(2)(a)(iii) of the ERA**, and **the Defendant Company is therefore ordered to pay to the Plaintiff 03 months' Wages as Indemnity In Lieu of Notice [9] and Severance Allowance as follows:**

[9] It was common ground between the Parties that the Plaintiff had been in continuous employment with the Defendant for more than 03 years (i.e. between 1993 and 2013), and therefore, the period of notice was 03 months as per paragraph entitled "TERMINATION" of (Doc. D4)

1)	**Rs16 300/- x 03 months**		**Rs48 900/-**
2)	**Rs16 300/- x 03 months x**	**236** **12**	**Rs961 700/-**
		TOTAL	**Rs1 010 600/-**

Pursuant to **s. 46(11) of the ERA**, the Court has a discretion as to any award relating to Interest on the amount of Severance Allowance payable (**Ramnarain v International Financial Services Ltd [2021 SCJ 35]**).

The Court is of the considered view that in view of the specific circumstances of the present matter, Interest at the rate of 03% *per annum* on the said amount of Severance Allowance would be fair, and **the Defendant Company is therefore ordered to pay to the Plaintiff 03% Interest *per annum* on the amount of Severance Allowance only (i.e. Rs961 700/- only), payable from the date of the present Judgment to the date of final payment**.

No Order as to Costs.

[Delivered by: D. Gayan, Ag. President]
[Intermediate Court (Financial Crimes Division]
[Date: 27 June 2023]