

*Dilmohamed S.A. v ABSA Bank Mauritius Limited formerly known as Barclays
Bank Mauritius Limited*

2022 IND 60

Cause Number 536/12

**IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)**

In the matter of:-

Mr. Sakeel Ahmad Dilmohamed

Plaintiff

v.

**ABSA Bank Mauritius Limited formerly known as
Barclays Bank Mauritius Limited**

Defendant

Ruling

In this amended plaint, in a gist, Plaintiff has claimed the sum of Rs. 30,542,873 as severance allowance at punitive rate from Defendant given that the termination of his employment by the said Defendant through a letter dated 30 April 2012 was allegedly unfair, unlawful and unjustified.

Defendant's plea is essentially to the effect that the bond of trust which should exist between an employer and an employee namely between Defendant and Plaintiff could no longer exist and as such, it could not reasonably in good faith take any other course of action but to dismiss Plaintiff.

Learned Counsel appearing for Plaintiff made a motion in open Court to the effect that his learned Attorney came twice to give a document to me but could not do so and he was insisting upon a ruling from this Court.

Such type of motion was also made before me previously by the same learned Counsel and which boils down essentially to having the Court to entertain an *ex-parte* application (viz. the document containing a reduced number of questions this time unlike previously) in order to obtain leave from the Court to call Defendant on its personal answers by trying to import the procedure obtained before the Supreme Court.

Such a motion has been turned down again in the sense that the document has not been accepted by the Court and for the same reasons given in my previous ruling namely **Dilmohamed S.A. v ABSA Bank Mauritius Limited formerly known as Barclays Bank Mauritius Limited [2021 IND 1]** as explained below by way of chronology.

In relation to my previous ruling given in **Dilmohamed S.A.** (supra), prior to the present case coming for trial, learned Attorney appearing for Plaintiff sought leave from the Court by way of an *ex-parte* application through the Magistrate in Chambers or through the Registry to call Defendant on its personal answers through a list of questions on personal answers which was revised on another occasion to be put to Defendant was attached to the application letters in order to meet the procedure obtained before the Supreme Court.

Subsequently, a ruling was given by the present Bench in open Court prior to the trial having been started which is to the effect that the procedure adopted by learned Attorney as per the procedure obtained before the Supreme Court could not be applied wholesale before the Industrial Court as it would be repugnant to the District, Industrial and Intermediate Court Rules 1992 which although being silent on that issue, because such *ex-parte* applications are to be channeled solely before the Master whose powers as regards leave for those applications are confined to the Supreme Court only and not to the lower Courts(see - **Dilmohamed S.A.** (supra)).

In that respect, as explained in that ruling, the Industrial Court could not adopt a wholesale application of Rule 36 of the Supreme Court Rules 2000 as it would be repugnant to our District, Industrial and Intermediate Court Rules 1992(see - **Jhundoo v. Jhurry[1981 SCJ 98]**) inasmuch as such *ex-parte* applications could

only be made before the Master and the Industrial Court could only entertain a motion pursuant to subsection 6 of the Rule 36 in the absence of such repugnancy being caused to our rules of Court viz. "*Notwithstanding paragraph (1), any party may at the hearing of a case, where the other party is present, move the Court to call the other party to be examined on his personal answers*".

Thus, I have essentially ruled in **Dilmohamed S.A.** (supra) that a proper motion was to be made in open Court by the learned Counsel for Plaintiff to put Defendant on personal answers and the complete list of the questions thus already prepared to be put in that respect to be communicated to his opponent only in order to give Defendant an opportunity to object or not pursuant to Rule 36(6) of the Supreme Court Rules 2000. Learned Senior Counsel appearing for Defendant wanted to know the purpose of such motion which would presumably be apparent to him at a later stage as per the list of questions being communicated to him or else the learned Counsel appearing for Plaintiff will have enlighten him on that issue.

Now, again prior to the case coming for trial, the learned Attorney appearing for Plaintiff has intimated to me in Chambers that he would decrease the number of questions to be put to Defendant on its personal answers as per a list in his possession namely the document and he wanted to confirm from me as regards the way to proceed with the matter. He was invited to stick to the ruling already given by me in **Dilmohamed S.A.** (supra) in making such motion before the open Court that the number of questions would be reduced, and his prepared list of questions viz. the document was not to be communicated to me but to be communicated at the level of Counsel only in the meantime giving his opponent ample time to decide whether to object or not and as such unnecessary delays would be avoided.

Learned Attorney appearing for Plaintiff turned up on another occasion stating to me in Chambers that he would comply with the ruling already given by me in **Dilmohamed S.A.** (supra) and that he was considering the possibility of having another Counsel to appear as well in the present case namely Mr. K. Pertab.

On the trial day viz. on 14.12.22, Mr. K. Pertab was not present in Court and the same other learned Counsel insisted upon a ruling from the Court as to why the requests of his instructing Attorney were turned down on two occasions in relation to the document (which is the reduced list of questions to be put to Defendant on its personal answers) to be given to me.

The inescapable conclusion for such insistence on the part of the same learned Counsel appearing for Plaintiff is because of his insufficient communication with his instructing Attorney concerning the present matter. Needless to add that the ruling already given by me in **Dilmohamed S.A.** (supra) is maintained. Indeed, a second proposed amended *proeclipe* has been filed at the Registry so that a motion to amend the first amended plaint was to be made on the material day namely on 14.12.22 as per a letter dated 2.12.22 emanating from his instructing Attorney and the name of Mr. K. Pertab has been added to his name in that letter.

Now should any learned Counsel appearing for Plaintiff wish to press on the amendment as per the second proposed amended *proeclipe*, then the motion for calling Defendant on its personal answers pursuant to Rule 36(6) of the Supreme Court Rules 2000 (as per the reduced list of questions namely the document to be communicated to the other party) should be kept in abeyance as there should be a final plaint and a final plea before such motion could be entertained.

The matter is ,accordingly, fixed *proforma* to 16 January 2023 for all learned Counsel appearing for Plaintiff to take a final stand by way of a concerted action with their instructing Attorney who will have to be present in Court as well in order to dispel all confusion as regards the pressing or the dropping of the motion for an amendment as per the second proposed amended *proeclipe* contained in the letter dated 2.12.22 bearing in mind that this is a longstanding case dating back to 2012 and the trial has not yet started.

Furthermore, should the motion for amendment be dropped, then the ruling already given by me previously in Dilmohamed S.A. (supra) is maintained namely that Plaintiff could only call Defendant on its personal answers by way of motion in open Court pursuant to Rule 36(6) of the Supreme Court Rules 2000 and not by way of ex-parte applications irrespective of any revised list on the number of questions to be put to it. True it is that it would have been a good thing for the Court to have been apprised with a list of questions to be put to Defendant on its personal answers prior to it being summoned especially in complex cases like the present one, but such procedure should be taken care of by the Legislator.

S.D. Bonomally (Mrs.) (Vice President)

28.12.2022