

Lamusse v Tex International Limited

2022 IND 19

CN309/11

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Yves-Robert Lamusse

Plaintiff

v/s

TEX International Limited

Defendant

RULING (NO. 1)

The Plaintiff is claiming **Unpaid Remuneration and Severance Allowance** from the Defendant Company for Constructive Dismissal, in terms of his Fourth Amended Plaintiff.

The Defendant Company has denied the said Claim in its Third Amended Plea.

The Parties were respectively assisted by Learned Counsel.

The Proceedings were held in English for the purposes of the Arguments.

In the course of the Plaintiff's testimony, the Plaintiff produced a document (Doc. P3), which purport was to show irregularities.

At that stage, Learned Counsel for the Defendant Company objected to the Plaintiff adducing evidence of irregularities in the Defendant Company, as by doing so, the Plaintiff was travelling outside his statement of case.

The matter was thereafter fixed for Arguments on the said objection.

Case For The Defendant Company

The gist of the Submissions made on behalf of the Defendant Company was to the effect that given no irregularities or anomalies had been averred in the Plaintiff, the Plaintiff was not allowed to adduce evidence of irregularities by placing reliance on the said document (Doc. P3), as by doing so, the Plaintiff was travelling outside his Pleadings.

Learned Counsel for the Defendant Company referred to, and put in copies of, a number of Authorities, and put in his Speaking Notes.

Case For The Plaintiff

In essence, the Submissions on behalf of the Plaintiff were that given there were averments of financial difficulties in the Plaintiff, by referring to irregularities in the course of his testimony, the Plaintiff was merely seeking to explain the cause of such financial difficulties.

Learned Counsel for the Plaintiff further submitted that in the alternative, the Plaintiff ought to be allowed to adduce evidence of irregularities to rebut the allegation of poor performance made by the Defendant Company in its Plea.

Learned Counsel for the Plaintiff referred to, and put in copies of, a number Judgments, and put in her Written Submissions.

Analysis

The Court has duly considered the evidence on Record, the Submissions of, and the Authorities referred to by, each Learned Counsel, as well as the Speaking Notes of Learned Counsel for the Defendant Company, and Written Submissions of Learned Counsel for the Plaintiff.

Applicable Legal Principles

Both Learned Counsel were in agreement as to the legal principles applicable when the Rules applicable to the Industrial Court are silent on specific aspects.

The Court does not therefore propose to deal with same in detail, save to highlight that it is settled Law that the Court is to turn to the **Supreme Court Rules** when the Rules applicable to the Industrial Court are silent.

Evidence Of Irregularities

The Court has duly considered the e-mail (Doc. P3) which was produced by the Plaintiff in the course of his testimony and the reason invoked by the Plaintiff in producing same.

The said document mentions “anomalies” in relation to accounts.

Averment in the Plaintiff

The Plaintiff is seeking to justify his adducing such evidence of irregularities by placing reliance on certain specific paragraphs of the Plaintiff, that is paragraphs 5 and 8(a)(c) as mentioned by Learned Counsel for the Plaintiff in the course of her Submissions.

The Court is however of the considered view that averring financial difficulties in the Defendant Company, in the Plaintiff, is very different from seeking to adduce evidence of anomalies/irregularities in the Defendant Company.

Had the Plaintiff been of the view that the alleged irregularities were central to his case, it stands to reason that it would have been incumbent on the Plaintiff to make such averments in the Plaintiff.

The Plaintiff however chose not to make any averments of alleged irregularities in his Plaintiff, and chose not to put in a Reply to the Plea (as was his Right).

The Plaintiff cannot now seek to adduce evidence of alleged irregularities in the Defendant Company by placing reliance on averments of financial difficulties in the Plaintiff.

As rightly pointed out by Learned Counsel for the Defendant Company, financial difficulties and financial irregularities are very different concepts.

Further, financial difficulties are not necessarily inextricably linked to irregularities. There may be financial difficulties without irregularities, there may be irregularities without financial difficulties, and there may be financial difficulties and irregularities.

The Court is of the considered view that financial difficulties cannot be understood to include irregularities.

Be that as it may, the basic principle remains that the Parties are bound by their Pleadings, and the Court is of the considered view that there is no specific averment of irregularities in the specific paragraphs of the Plaintiff referred to by Learned Counsel for the Plaintiff to justify the Plaintiff's position.

To Rebut Averment Of Poor Performance

The very fact that the Plaintiff is placing reliance on specific paragraphs of the Plaintiff to justify his position that the issue of alleged financial irregularities has been raised in the Plaintiff clearly goes against the Plaintiff's contention put forward in the course of the Arguments, that it was to defend himself against allegations of poor performance made by the Defendant Company in its Plea, that he was seeking to adduce evidence of alleged financial irregularities.

The Plaintiff cannot seek to adduce evidence of irregularities by submitting that the said issue was raised in the Plaintiff by averring financial difficulties, and at the same time, seek to adduce evidence of irregularities to rebut the averment of poor performance made by the Defendant Company in its Plea.

Clearly, the issue of financial difficulties was fundamental to the Plaintiff's case from the outset, and was averred in the Plaintiff. And the Plaintiff is attempting to explain the financial difficulties by reference to irregularities. But had the Plaintiff been of the view that irregularities were fundamental to his case, it would have been incumbent upon him to aver same in his Plaintiff.

This was however not done, and cannot now be cured by seeking to adduce such evidence through the back door, as it were.

Conclusion

In light of all the above and for all the reasons given above, the objection of the Defendant Company is upheld, and the Plaintiff is not allowed to adduce evidence of alleged irregularities in the Defendant Company.

[Delivered by: D. Gayan, Ag. President]

[Industrial Court]

[Date: 11 April 2022]