

*Taillevan-Lagouche M.J. v NSD Aluminium Opening Ltd*

**2024 IND 76**

**Cause Number 490/23**

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

**In the matter of:**

**Mrs. Marie Joanna Taillevan-Lagouche**

**Plaintiff**

**v.**

**NSD Aluminium Opening Ltd**

**Defendant**

**Judgment**

The averments of this plaint are as follows –

- (a) Plaintiff was in the continuous employment of Defendant as Shop Assistant since 13.05.2021. She was employed on a 6-day week basis and was remunerated at monthly intervals at the terminal basic rate of Rs 12,000. She last worked on 13.07.2021.
- (b) She was sick on 14.07.2021 and 15.07.2021 and she notified Defendant's préposé, Ms Pooja Bhuruth Secretary, of same by way of a text message. On 15 July 2021, she received a text message from Defendant's préposé informing her that Mr. Sachin has decided that henceforth he would not employ anyone in the showroom and if ever her

*services would be required, she would be informed accordingly. She was also asked to collect her salary for the month of July 2021 and also to return her uniform.*

- (c) *She has not been paid the end of year bonus for year 2021.*
- (d) *She, therefore, considers that Defendant has terminated her employment without notice and any justification.*
- (e) *Plaintiff is, therefore, claiming from Defendant the sum of Rs. 14,000 made up as follows – (i) wages as indemnity in lieu of notice: Rs 12,000 and (ii) end of year bonus 2021 (Rs 12,000 x 2/12 months): Rs 2,000.*

Defendant did not file any plea and left default on the trial day although it was duly summoned to appear.

At this stage, I find it apt to resort to the procedure obtained before the Industrial Court as per Section 7(1) of the Industrial Court Act 1973 which stipulates:

***"7. Institution and conduct of proceedings***

- (1) *Subject to the other provisions of this Act and to any specific procedural provisions in any enactment set out in the First Schedule, all proceedings before the Court shall be instituted and conducted in the same manner as proceedings in a civil or criminal matter, as the case may be, before a District Magistrate.*

Accordingly, default judgments are governed by Section 16 (1) of The District and Intermediate Courts (Civil Jurisdiction) Act as reproduced below:

*"Where on the day so fixed in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant does not appear, or does not sufficiently excuse his absence, the Court, upon proof of the service of the summons, may give judgment in terms of the plaint or, where the cause includes a claim for substantial damages, proceed to the hearing of the witnesses and trial of the cause on the part of the plaintiff only,*

*and in either case, the judgment shall, subject to subsection (2), be as if both parties had attended.”(emphasis is mine)*

Thus, Plaintiff was allowed to proceed in its absence pursuant to Section 16 (1) of The District and Intermediate Courts (Civil Jurisdiction) Act. Plaintiff gave evidence in Court in line with her above averments, and she produced a copy of her contract of employment as per Doc. P1 and a copy of her pay slip for June 2021 as per Doc. P2.

I have duly considered all the evidence put forward before me. At this particular juncture, I find it appropriate to quote the following passage from **D. Hurnam v K.B. Bholah & Anor [2009 SCJ 265]** where the Supreme Court made the following pronouncement on the purport of Section 16(1) of the District and Intermediate Courts (Civil Jurisdiction) Act:

*“In his address to us, the appellant referred us to section 16(1) of the District and Intermediate Courts (Civil Jurisdiction) Act, to submit that inasmuch as the respondents had left default, the trial Court was bound to accept the evidence of the appellant and give judgment in terms of the plaint.*

We are unable to agree with him on that submission. Section 16(1) of the Act reads as follows:

*“Where on the day so fixed in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant does not appear, or does not sufficiently excuse his absence, the Court, upon proof of the service of the summons, may give judgment in terms of the plaint or, where the cause includes a claim for substantial damages, proceed to the hearing of the witnesses and trial of the cause on the part of the plaintiff only, and in either case, the judgment shall, subject to subsection (2), be as if both parties had attended”. (Emphasis is ours)*

As may be seen, the obligation to give judgment where a defendant leaves default is not a matter of course. As section 5(4) (General Rules of Interpretation) of the Interpretation and General Clauses Act stipulates:

“(4)(a) The word “shall” may be read as imperative.

(b) The word “may” may be read as permissive and empowering.”

*Thus, the existence of the word “may” prohibits us to interpret section 16(1) of the Courts Act as though it was imposing a mandatory duty on a court of law to pronounce judgment in favour of a claimant the moment the opponent has not put in an appearance.*

*But there is more than section 5(4)(a) and (b) which militate against such an interpretation. As fundamental is the principle of constitutionality to the formulation of law, so fundamental is the principle of legality to the pronouncement of a judgment. A court of law is under a positive obligation to ensure that any judgment given is soundly grounded both in law and on the facts of the case before it. This obligation is not in any manner reduced by the fact that the judgment is a judgment by default. On the contrary, that obligation assumes all its importance by that fact inasmuch as the absence of pleadings and enlightenment in law puts a burden on the court to ensure that as a court of law, any judgment may only be firmly grounded in law. To state otherwise would mean making courts of law the sausage machine to produce justice. Justice is not the produce of a machine. It is the product of human intellect, the result of a profound exercise in awareness and discernment.*

*What section 16(1) of the Courts Act does is to give that power to the Court, as opposed to acting as a rubber stamp of judicial processes, to engage instead its intellect in deciding: (a) in point of fact, whether the evidence adduced is credible in the circumstances; (b) in point of law, whether the facts amount to an action that is maintainable; and (c) if the answers to (a) and (b) are positive, whether, in all circumstances of the case, a default judgment may be pronounced.*

*Judicial powers are wide in that intellectual exercise. In the common law system that role was more pronounced from the very beginning. In the civilian system, it became more apparent lately. The emphasis is on the rule of law and the role of the judicial officer in the office of the judge.”*

Now, the unrebutted, straightforward and convincing testimony of Plaintiff is compatible with her contract of employment namely Doc. P1 as regards the termination clause and her pay slip viz. Doc. P2 showing a sum of Rs12,000 as her basic monthly salary. Thus, I believe her unchallenged testimony which I find to be plausible and reliable in line with the provisions of the applicable law namely Sections 63(5) and 54(3) of the Workers’ Rights Act 2019 as follows:

**“63.      Notice of termination of agreement**

(5) Any party may, in lieu of giving notice of termination of agreement, pay to the other party the amount of remuneration the worker would have earned had he remained in employment during the period of notice".

**"54. End of year bonus**

- (3) Where a worker remains in continuous employment with the same employer for only part of the year and-
- (a) his employment is terminated in the course of the year for any reason;(...) the worker shall be paid, not later than the last working day of the month in which his employment is terminated (...) a bonus equivalent to one- twelfth of his earnings for that year."

For all the reasons given above, I find that the case for the Plaintiff has been proved on a balance of probabilities. I, accordingly, order Defendant to pay to Plaintiff the sum of Rs. 14,000 representing one month's wages as indemnity in lieu of notice: Rs 12,000 and the end of year bonus 2021 (Rs 12,000 x 2/12 months): Rs 2,000.

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

**30.12.24**

