

**Devieilhe v Ikeys Ltd**

**2022 IND 20**

**CN499/19**

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

**In the matter of:-**

**Charles DEVIEILHE**

**Plaintiff**

**v/s**

**IKEYS LTD**

**Defendant**

**RULING (NO. 1) (WILL PROPOSED AMENDED PLAINT FORESTALL DETERMINATION OF PLEA IN LIMINE LITIS AS TO JURISDICTION?)**

The Plaintiff is claiming the sum of **Rs1 260 649. 49/- representing Severance Allowance, Refund Of Leaves Not Taken, Pro Rata End Of Year Bonus, Commissions Due, and Commissions Which Will Become Due, as per the Praecepte.**

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

Each Party was assisted by Learned Counsel.

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

The Defendant Company raised a Plea In Limine Litis in its Amended Plea, which reads as follows:

In view of the fact that the relevant provisions of the Employment Rights Act do not apply to the Plaintiff whose salary exceeds Rs 360,000/- yearly, the Industrial Court has no jurisdiction to hear this dispute.

The case should therefore be set aside with costs.

The Plaintiff then filed a Proposed Amended Praecipe, to which the Defendant Company objected “in as much as the said proposed amendments would forestall the determination of the plea in limine litis with regards to the jurisdiction”.

The matter was therefore fixed for Arguments.

### **Case For The Defendant Company**

Learned Counsel for the Defendant Company submitted in essence that the amount being claimed had been reduced to be able to meet the Jurisdiction of the Court, when the very issue of Jurisdiction had been taken in the Plea In Limine Litis, so that the proposed amendments as per the Proposed Amended Praecipe were being sought with the sole purpose of defeating the Plea In Limine Litis, and should not be granted.

Learned Counsel for the Defendant Company referred to and filed copies of the cases of:

- 1) **Monroe v The State Bank of Mauritius** [\[2008 SCJ 73\]](#);
- 2) **Bank of Mauritius & Anor v Chadha & Others** [\[1997 SCJ 171\]](#); and
- 3) **Bengraz v The State of Mauritius & Others** [\[2019 SCJ 15\]](#).

### **Case For The Plaintiff**

Learned Counsel for the Plaintiff submitted to the effect that the purpose of the proposed amendments was “indeed to modify the claims so that now the plaintiff is only claiming the severance allowance”.

Learned Counsel further submitted that the Plaintiff had taken note of the point in law brought by the Defendant Company, and denied that the proposed amendments were being sought to forestall any argument, as the Jurisdiction of the Industrial Court was not in question when it

comes to Severance Allowance, given the provisions of the **Employment Rights Act** (hereinafter referred to as **ERA**) to the effect that Part VIII of the said Act was applicable to Workers irrespective of their annual remuneration.

Learned Counsel for the Plaintiff referred to and filed copies of:

- 1) The relevant provisions of the **ERA**;
- 2) The relevant provisions of the **District, Industrial And Intermediate Courts Rules 1992** (hereinafter referred to as **DIICR**); and
- 3) **Perrier & Another v Mauritius Union Assurance Co. Ltd** [\[2016 INT 83\]](#).

### **Analysis**

The Court has duly considered the Submissions put forward by each Learned Counsel, and the Authorities, cases, and enactments referred to and put in by each Learned Counsel.

The Ruling of **Perrier (supra)** is of persuasive value only.

At the outset, the Court notes that there are 02 paragraphs numbered “15” in the Proposed Amended Praecipe.

### The Law

Rule 48 of the **DIICR** reads as follows:

**48.** The District Magistrate may, at all times, amend all defects and errors, both of substance and of form, in any proceedings in civil matters, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; all such amendments may be made with or without costs, as to the Magistrate may seem fit, and also such amendments as may be necessary for the purpose of determining, in the existing suit, the real question in controversy between the parties shall be so made. (emphasis added)

The Court finds the following extract from the recent Judgment of **Dayal v Jugnauth & Ors** [\[2021 SCJ 178\]](#) of particular relevance:

As regards the principles governing the amendment of pleadings, learned Counsel have referred us to numerous authorities, including **Honourable Jagatsingh v Honourable Boodhoo** [\[1981 MR 357\]](#), **Bonnellame v Curé** [\[1991 MR 224\]](#), **Soobhany v Soobhany** [\[1989 MR 191\]](#), **Patel v Benessreesingh** [\[2008 SCJ 106\]](#), **Sheeny Worldwide Limited v Aerospace Finance (Asia) Limited** [\[2016 SCJ 491\]](#), **J C Bamford Excavators v Khadun Construction Ltd** [\[2019 SCJ 138\]](#), **Harel v Societe Jean Claude Harel** [\[1993 MR 251\]](#), **Reekoye v Mauritius Union Assurance Co Ltd** [\[2004 SCJ 66\]](#), **Cassim v United Bus Service Co Ltd** [\[1988 MR 61\]](#), **Punjabi v Rajwani** [\[2009 SCJ 76\]](#), **Hemery v Ramlogan** [\[2012 PRV 82\]](#), **Bullen & Leake & Jacob's Precedents of Pleadings** and **Odgers' Principles of Pleading and Practice**.

The principles which may be culled from the above authorities are as follows:

- (a) the guiding principle of cardinal importance is that, generally speaking, amendments of pleadings ought to be made for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings;
- (b) the Court has a wide discretion to grant a motion to amend a pleading;
- (c) the Court will exercise such discretion judiciously taking into account, inter alia, the nature and purpose of the proposed amendment, the stage of the proceedings, any bad faith of the party moving for the amendment and any likely prejudice to the other party;
- (d) the Court will more readily grant an amendment to a pleading before the trial has started than at the trial or at a later stage;
- (e) nevertheless, an amendment to a pleading can be granted at any stage of the proceedings, even at a late stage, if such amendment would enable the Court to decide the real question in controversy;

- (f) the Court is not here to punish a litigant for mistakes in the conduct of his case which are not fraudulent or intended to overreach but to decide the rights of the parties and the matters in controversy;
- (g) an amendment of a pleading which gives particulars of the averments of the pleading is permissible;
- (h) there is no absolute prohibition from raising a new cause of action or defence by way of an amendment; and
- (i) (i) if the proposed amendment is made mala fide, will cause undue delay, or will unfairly prejudice the other party, is irrelevant or useless, or would raise a merely technical point, leave to amend will be refused

In light of all the above, it is settled Law that the Court has wide powers to allow amendments as to the substance of the Pleadings “at all times”, and which may “be necessary for the purpose of determining, in the existing suit, the real question in controversy between the parties”, and that the Court is to inter alia look at the nature and purpose of the proposed amendments, and any prejudice which may result to the other Party by the proposed amendments.

#### Would The Proposed Amendments Forestall The Plea In Limine Litis?

It was submitted on behalf of the Defendant Company that the sole purpose of the amendments sought in the Proposed Amended Praecipe was to forestall the determination of the Plea In Limine Litis raised in relation to the Jurisdiction of the Industrial Court, given “the relevant provisions of the Employment Rights Act do not apply to the Plaintiff whose salary exceeds Rs 360,000/- yearly”.

The Court is of the considered view it is worth noting the stage at which the said proposed amendments are being sought.

At the Sitting of 14-09-2020, Learned Counsel for the Defendant Company highlighted that he was “stating that commission and refund of leaves not taken are not related to termination of employment”, at which stage Learned Counsel for the Plaintiff took no objection to the Proposed

Amended Plea in view of the Particulars provided by Learned Counsel for the Defendant Company, and the Amended Plea with a Plea In Limine Litis was filed.

Learned Counsel for the Plaintiff then moved for the matter to be fixed for Pro Forma (Stand) for documents to be exchanged.

At the following Sitting, Learned Counsel for the Plaintiff filed a Proposed Amended Praecipe, and the proposed amendments as per the Proposed Amended Praecipe relate essentially to the deletion of the averments in relation to the Commission and Leaves Not Taken, except for paragraphs 4.(i), 13, and 16 of the Proposed Amended Praecipe.

Now, true it is that the said proposed amendments are being sought after the Plea In Limine Litis was raised in the Amended Plea, but the issues of Commission and Leaves Not Taken were specifically highlighted by Learned Counsel for the Defendant Company himself on the very day the Amended Plea with the Plea In Limine Litis was filed.

These proposed amendments are being sought following the issues raised by Learned Counsel for the Defendant Company himself as to Commission and Leaves Not Taken, and therefore, not exclusively after the Plea In Limine Litis was raised.

Further, the basis of the Plea In Limine Litis is that the Court does not have any Jurisdiction as the Plaintiff's annual salary exceeds Rs360 000/-.

Now, as per the Plaintiff's own averment at paragraph 4.(i) of the Praecipe, of which the Defendant Company took note, the Plaintiff's monthly salary is Rs80 000/-.

There is a proposed amendment at paragraph 4.(i) of the Proposed Amended Praecipe to add "gross" after "monthly", but there is no proposed amendment as to the figure in the Plaintiff's monthly salary.

And from a simple mathematical calculation, it is clear that the Plaintiff's annual salary, even with the proposed amendments as per the Proposed Amended Praecipe, exceeds Rs360 000/- per annum (Rs80 000/- as monthly salary x 12 months = Rs960 000/-).

The Court is therefore of the considered view that it cannot be said that the sole purpose of the said proposed amendments is to thwart the Plea In Limine Litis, as the Plea In Limine Litis will not fall by itself or be defeated, should the proposed amendments be granted (**Monroe (supra)**, **Bank of Mauritius (supra)** and **Bengraz (supra)**).

In light of all the above and for all the reasons given above, the Court finds that the proposed amendments as per the Proposed Amended Praecipe do not have as sole purpose the thwarting of the Plea In Limine Litis raised by the Defendant Company, will in fact not result in forestalling the determination of the Plea In Limine Litis as raised by the Defendant Company, and that therefore no unfair prejudice will be caused to the Defendant Company should the said proposed amendments be granted (**Dayal (supra)**).

The Court is also of the considered view that the said proposed amendments will enable the Court to determine the real issue/s in controversy between the Parties.

### **Conclusion**

In light of all the above and for all the reasons above, the objection of the Defendant Company is overruled, and the proposed amendments sought as per the Proposed Amended Praecipe are granted.

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

[Industrial Court]

[Date: 20 April 2022]