Toinette G.C.D. v Absa Bank(Mauritius) Ltd

2025 IND 74

Cause Number 349/16

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:

Gino Christian Desire Toinette

Plaintiff

v.

Absa Bank (Mauritius) Ltd

Defendant

Judgment

In this amended plaint, Plaintiff has claimed the sum of Rs. 3,636,413/- from Defendant as a result of his alleged wrongful, unjustified and unfair dismissal and which is made up as follows:

(a) 30 days remuneration in lieu of notice: Rs 80,950.

(b) Severance allowance (Rs 98,199 x 11 yrs 10 mths x 3): Rs 3,486,064.

Defendant has averred in its amended plea that it is not indebted to the Plaintiff in the sum claimed or in any other sum whatsoever inasmuch as Plaintiff's employment was terminated following Plaintiff's hearing before a disciplinary committee wherein the first charge levelled against him had been proved before that committee so that the Defendant, acting as a reasonable employer, could not in good faith take any

other course of action but to terminate his employment immediately, on ground of gross misconduct. Plaintiff appealed against his dismissal to the appeals committee of Defendant. The appeal was rejected by the independent chairperson hearing the appeal and the dismissal was upheld.

Plaintiff's case rested solely on the evidence given by him in Court.

The evidence borne by the record in relation to the Plaintiff's case is essentially to the following effect.

It is common ground:

Plaintiff had been in the continuous employment of Defendant company from 17th May 2004 to 23rd March 2016. Although he stated that he was last employed as Premier Relationship Manager, earning a monthly terminal salary the quantum of which is disputed, it was nevertheless accepted that his exact title was Premier Banking Relationship Manager.

Plaintiff was convened before a disciplinary committee to answer 2 charges levelled against him by Defendant namely: -

1. "*It is alleged that you acted in serious breach of acceptable ethical standards of conduct and in breach of the Conduct Risk Policy, in that on or around 26 September 2014, you processed an application for a customer of the Bank, namely one [xxxxxx] while the latter was hospitalized in a private clinic.*"

2. *"It is alleged that you acted in breach of the Conduct Risk Policy, in that on or around 08 December 2015 you processed a credit card application for a customer of the Bank, namely one [XXXXX], without appropriately assessing the needs of the customer."*

The second charge for which Plaintiff was suspended was not proved against him as per the findings of the disciplinary committee.

He was among the Relationship Managers of Defendant who recruited a certain number of customers of high net worth *inter alia* businessmen and people who had top jobs and who did not have time so that they were the guys that needed to get a relationship, to be taken care of and to be nurtured which was one of the services of Premier Banking.

In order to attract clients of very high net worth, he went towards the clients who were pressed for time where it could be in their offices or at any place they desired.

In so doing, in the year 2005, he had a client with whom he cultivated a good work relation and he wanted to sell his business which worked out to be the biggest deposit for Defendant's retail history which was more than Rs 256 million and 6.6 million Euros. He was congratulated as being a "star" in having made Defendant proud as a star of Africa and Indian Ocean so that his outstanding performance was a living proof of Defendant's Guiding Principles and making a difference so that he was meant to be rewarded in one of Africa's most vibrant city of Cairo in Egypt where he was qualified for the 2006 Eagle Awards All Stars incentive (Doc. F). He also won the Best Premier Award for Defendant in the year 2009 (Doc. G).

However, Plaintiff admitted that as per a letter dated 15.12.2015 (Doc. H) emanating from Defendant whereby the first charge was in relation to an incident which happened on 26.9.2014 which had been investigated upon and brought against him was as follows:

"It is alleged that you acted in serious breach of acceptable ethical standards of conduct in breach of the Conduct Risk Policy in that on or around 26 September 2014 you processed an application for a customer of the Bank, namely one Ezezia Menelas, while the latter was hospitalized in a private clinic."

Plaintiff further admitted: -

(a) When he contacted Mr. Menelas, he was not a customer of the Defendant yet and he was hospitalized in a private clinic for having consumed too much alcohol and for which he was admitted for a few days according to his wife.

(b) He came into contact with Mr. Menelas through his wife. At no time, Mr. Menelas contacted him in the first place telling him that he had won lotto in the sum of about Rs 9 million and that he wanted to close his account at SBM bank and to open one at Defendant while hospitalized and bedridden, but he was contacted by his wife as she was afraid her husband might spend the lotto money. Mr. Menelas was qualified for Premier Banking as the criterion was a minimum deposit of Rs 2 million.

(c) Thus, he went to the private clinic where her husband was hospitalized and he met Mr. Menelas in the lounge of that clinic. There were Mr. Menelas, his

wife and two other persons when they discussed about the opening of his account with the Defendant which he agreed. Plaintiff said that he understood all the terms and conditions. Therefore, his wife, son-in-law and one more third party were present while the onboarding process was ongoing in the lounge of the clinic.

(d) Plaintiff did not ascertain from his treating Doctor whether Mr. Menelas was in a state of mind that he could clearly understand the purport of his commitment under the contract with the Defendant. But he relied on his wife only that he was supposed to get discharged from the clinic on the material day after having been hospitalized for a few days. When Mr. Menelas was discharged, he noticed that about Rs 1.9 million was missing from his account and for which no one could account for, not even the Plaintiff who could only give him a statement of account and no more.

(e) Plaintiff was dismissed following his hearing before a disciplinary committee where the first charge was proved against him as per the findings of that committee and the decision was maintained on appeal which was internal to the Defendant.

(f) Although, he claimed that he had not seen the Conduct Risk Policy of the Defendant and that he did not remember having followed training with Defendant as regards the Conduct Risk Policy, it was the first time that he approached a new client while hospitalized.

The case for the Defendant rested on the evidence given by Mr. Prajitsing Seepargot in his capacity as Relations Manager of Defendant and Mrs. Rosina Begum Abhia (Head of Relationship Management at Defendant).

1. Mr. Prajitsing Seepargot in his capacity as Relations Manager gave evidence in Court.

At the time of the termination of Plaintiff's employment, he was Senior Relationship Manager of Defendant in the Retail Department. There was a complaint made by a customer of Defendant directly to the Bank of Mauritius which triggered an enquiry at the Defendant Bank as per Doc. D1. Subsequently, an investigation was carried out and a charge letter was issued on Plaintiff on the 15.12.2015 as per Doc. D2 as follows: *"It is alleged that you acted in serious breach of acceptable ethical standards of conduct and in breach of the Conduct Risk Policy, in that on or around*

26 September 2014, you processed an application for a customer of the Bank, namely one Ezezia Menelas, while the latter was hospitalized in a private clinic."

Following the outcome of Plaintiff's hearing at the disciplinary committee where the charge was found proved, his employment was terminated for gross misconduct on 23.3.2016 as per the termination letter (Doc. D3). There was an internal appeal procedure at the Defendant Bank which he resorted to, but the decision to dismiss him was upheld (Doc. D4).

As per the Disciplinary Capability and Grievance Toolkit, Barclays Bank PLC (now Absa Bank (Mauritius) Ltd) (Doc. N):

"*Misconduct: This is when an employee has failed to follow Barclays rules, policies or procedures, for example: failure to follow a reasonable request, verbal or written; regular/persistent lateness, where there is no underlying capability reason; less serious breaches of Barclays rules, work practices or procedures where a written warning is still warranted.*"

There was another situation called "Gross misconduct" as per that document (Doc. N) which would include serious breach of Barclays rules or other misconduct of a serious nature which would normally result in summary dismissal namely without any contractual notice period or payment in lieu of notice being given or any prior first or final written warnings. The Plaintiff's action could fall under breach of Barclays rules and breaches of data protection. For example, when meeting a client and even if the employee was opening an account, when the client was already a client of the Bank, he was unwell or sick, his Relationship Manager came to him and assisted him.

But that was a new client for whom the Plaintiff was going to open a new account and the first thing that needed to be ascertained was whether the person, the place was secure, it was a reasonable place. Plaintiff went to a place where the client was hospitalized namely where Mr. Menelas was hospitalized. Plaintiff did not even ascertain whether Mr. Menelas's state of mind was in the right state to be a client or not. He never had that relationship of trust with Mr. Menelas because he was not even a client of the bank. There were breaches related to data protection regulations because the Plaintiff started discussing the opening of the account before people other than Mr. Menelas and that included his wife and his son-in-law and he was the one who allegedly defrauded him of his money from his account per the information

on record at the Defendant bank. There was an investigation carried by Mr. Tanee who no longer worked at the Defendant. But the investigation was also carried by Mr. Teerun Somnath who was still at the Defendant Bank. When Mr. Tanee asked the Plaintiff to explain the circumstances, he explained that there was a guy who won the lotto for Rs 9 million. Plaintiff said he was a personal banker and he could go any time and went to meet the client whilst hospitalized. His family was there and that was how he met him. As far as he could recall it was not Mr. Menelas that called the Relationship Manager, but his wife. But the onboarding process was done while her husband was hospitalized and his colleague was present. Plaintiff gave his version of events and Mr. Menelas also gave his version and explained. Mr. Menelas was not brought before the disciplinary committee but his version was recorded. But the fact of going to open a bank account for a person while he was hospitalized and when that person was not even a client and was admitted for treatment, Plaintiff did not talk to the treating doctor to ensure that he was in the right state of mind and that was clearly unethical and not right.

As per the Conduct Risk Outcomes, there was a module for training for Managers namely *"Our culture places customer interest at the heart of our strategy planning decision making and judgment."* He did not agree that Plaintiff brought a customer who brought Defendant Rs 9 million as he was not a customer yet and that was the difference. He was not even a customer of the Defendant Bank. He was not onboarded yet and it was only after onboarding that he became a customer. There was an onboarding done while he was hospitalized on his sick bed. The onboarding was a process which started in that manner and Plaintiff had the documents signed on his sick bed without even knowing whether that person was in the right state of mind. He did not even consult the doctor and that patient was there and who was therefore being drunk and was thus encountering mental problems and he had signed afterwards all those papers in that state. That was where and how the process started. He believed that a person on the sick bed who was not even a customer, that policy addressed issues relating to customer of the bank and he was not a customer at that point in time. He was not yet a customer. According to him, by not doing the right due diligence while he was hospitalized before onboarding the person, he believed he committed a breach. He needed to manage the environment whether it was safe and to manage the person with due diligence as, for example, the privacy of personal data had to be safeguarded. Plaintiff went there and he got all the information of the customer before all the family members. He had that customer signing all the forms before the family members. When he read through

the documentation, Plaintiff ticked the internet banking selection there at that point in time before all the family members and that was the way one of the family members defrauded the person from his money. He was on the sick bed and was hospitalized. Plaintiff went there and gave him internet banking and that person claimed that he was illiterate, that he could not even read and write, that was even worse. All throughout, the wife was the person who phoned Plaintiff. Based on the records, not only the wife was there, the son in law was also there. The son in law defrauded the person. Subsequently, Mr. Menelas realized that money was missing in his account and went to the Defendant and met the Plaintiff. The latter investigated and gave him a statement of account and asked him to go to the police.

2. Mrs. Rosina Begum Abhia in her capacity as Head of Relationship Management at Defendant gave evidence in Court.

As per the policy and protocol, the Defendant had to know the client. Any onboarding of the client needed to be face to face most probably and the employee needed to be sure when he onboarded a client, he understood his age, he talked to him and he understood what he was being told. There should be confidentiality which meant in the absence of a third party and surely not in a state where he was admitted in a clinic because his mental health was not known, there was no doctor's advice and therefore it could not be confirmed whether he understood or not.

In the present case, the client was admitted in a clinic. So, that was not the practice of the Bank, because the Defendant had a Conduct Risk Policy which specifically specified that at every moment, they needed to make sure that they did not do things to the detriment of the client and they understood his needs and the client also understood what they were talking about and the confidentiality of the client was very important.

According to her file, the spouse of the client contacted the Relationship Manager. The person who was going to be onboarded was not an existing client of the Defendant Bank. As a banker, it was not allowed to talk about confidential matter of a client in front of anybody. In the present case, it was done in a clinic and the state of mind of the customer has remained unknown whether he understood. There were two facts namely it was done in a clinic and secondly in front of other parties which were not according to their practice and policies. So, Plaintiff incorrectly onboarded the client in the present case. He should never onboard a client in a clinic because he was bedridden if she was not mistaken. So, Plaintiff was not aware of

his mental state whether he understood or not as Plaintiff was not a doctor. Secondly, there were third parties with him in that room which was a breach of confidentiality.

As per the file, the client did a claim as he was defrauded. The onboarding process or the term “embark” would be a process until it was accepted by the Bank. When Plaintiff went to the clinic, Mr. Menelas was not a customer and the process started then. During the onboarding of a client, first the Plaintiff would have to know the client. There were physical papers and understanding of the client, understanding of his needs and why he was opening the account understanding all that. Having the documents to identify the client and the documents required were the Identity card and a proof of address which was less than 3 months. The Plaintiff had to do a due diligence exercise. In normal practice, due diligence was done before onboarding any client. The practice was the Relationship Manager himself signed for the account opening and there was also the conduct risk policy that had to be adhered to namely that Plaintiff should not do anything to the detriment of the customer. The person was onboarded on paper and then the acceptance was done by the Relationship Manager himself.

I have given due consideration to all the evidence put forward before me and the submissions of learned Counsel for the Plaintiff and Defendant.

The contention of the Plaintiff boils down to the fact that because he won two commendable awards in the past one of which was a “star” award so that there was a record deposit at Defendant bank, taking into consideration that the second charge for which he was suspended was not proved against him before the disciplinary committee, the Defendant could in good faith not have dismissed him in relation to the first charge taking into account of his 12 years of continuous employment with Defendant. Furthermore, a copy of such Conduct Risk Policy was not brought before the disciplinary committee of Defendant and Plaintiff had not seen it.

Now both charges levelled against the Plaintiff by the Defendant concerned essentially a breach of the Conduct Risk Policy of Defendant for which he was called before the disciplinary committee and for which the first charge was proved. Plaintiff claimed that he was trained for the position he held in the retail department. Indeed, at no time did he say in Court that he said before the committee that he was not aware of that policy at the material time or that such policy was not in force then. He should have necessarily known the contents thereof to have been in a position to

answer both charges before that committee bearing in mind that he was represented by his Counsel then.

Furthermore, Plaintiff never stated in Court that the star award he received in 2006, the onboarding process was done while the client who wanted to sell his business was hospitalized being admitted in a private clinic and that he was approached by his wife let alone that he admitted that it was the first time that he did the onboarding process of a new client at a private clinic while he was hospitalized and that the star award was a living proof of Defendant's Guiding Principles.

Thus, it can safely be inferred that the Conduct Risk Policy was in force at the material time and ought to have been complied with by the Plaintiff in the position held by him at the material time at the stage of onboarding a new client of Defendant namely Mr. Menelas and which involved a considerable amount of trust and due diligence so that the onboarding process was not to be done to the detriment of the client by maintaining confidentiality necessitating the absence of third parties. Such a breach of the Conduct Risk Policy had led to the disappearance of about Rs 1.9 million from the account of Mr. Menelas and which could have been a lot more had the client taken more time to check his account thereafter.

Now although such Conduct Risk Policy was not brought before the disciplinary committee, it was material that the Defendant was aware or ought to have been reasonably aware at the time it took the decision to dismiss Plaintiff following the outcome of its disciplinary committee (irrespective of the fact that it was open to the Defendant not to be bound by the finding of that committee in relation to that first charge). In such manner, the Court will be able to assess whether his dismissal was justified or unjustified at the time the decision was taken by the Defendant to dismiss him. True it is that in the Supreme Court case of **Lafresière M v New Mauritius Hotels Limited [2021 SCJ 244],** an extract from the Privy Council case of **Smegh (Ile Maurice) Ltée v Persad D. [2011 PRV 9]** at paragraph 19 was cited as follows:

"The aim of a disciplinary committee, as we have said, is merely to afford the employee an opportunity to give his version of the facts before a decision relating to his future employment is reached by his employer. It is no substitute for a court of law, nor has it got attributes. Furthermore, the employer is not bound by the recommendations of the disciplinary committee and is free to reach its own decision in relation to the future employment of his employee, ***subject to the sanction of the Industrial Court****."*

Again, I find it also appropriate to quote an extract from the Supreme Court case of **Moortoojakhan R. v Tropic Knits Ltd** [2020 SCJ 343] which endorsed the principle laid down in **Smegh** (supra) and **Planteau de Maroussem v Société Dupou** [2009 SCJ 287] as follows:

*"Now, it is trite law that a Disciplinary Committee is not a Court of law and does not have its attributes (see **Planteau de Maroussem** as endorsed in **Smegh**). It is set up by the employer as "an obligatory part of the employer's internal procedure for dismissing an employee" (see **Smegh** at paragraph 20). There is nothing improper therefore in the appointment by the employer of the Chairperson and any member of the Disciplinary Committee.*

*We fully agree in that regard with the following pronouncement of the Supreme Court in **Planteau de Maroussem**, which was cited with approval in **Smegh**-*

"The aim of a Disciplinary Committee (…) is merely to afford the employee an opportunity to give his version of the facts before a decision relating to his future employment is reached by his employer. It is no substitute for a Court of law, nor has it got attributes. Furthermore, the employer is not bound by the recommendations of the Disciplinary Committee and is free to reach its own decision in relation to the future employment of his employee, subject to the sanction of the Industrial Court."

*The Disciplinary Committee therefore operates as an obligatory mechanism for the employer to provide an opportunity to its employee to give his version in relation to the charges laid against him pursuant to the law (in this case, **section 38(2)(a) of the Employment Rights Act**) and to attempt to dissuade the employer from dismissing him. The findings of the Disciplinary Committee are not conclusive and the employer may still come to a different conclusion. It is then for the Industrial Court to determine if any termination of the employee's employment was justified or not on the basis of the evidence that was or ought to have been available to the employer at the time.*

*An employee does not therefore enjoy the same rights before a Disciplinary Committee set up by his employer as he does before an independent and impartial tribunal set up to determine the extent of his civil rights and obligations pursuant to **section 10(8) of the Constitution**. Indeed a disciplinary hearing is not conducted with the same formality as a trial before a Court or tribunal. The employee should*

however be given a fair opportunity to put forward his defence and give his version before the Disciplinary Committee. As the Supreme Court noted in ***Drouin v Lux Island Resorts Ltd*** *[2014 SCJ 255] and* ***Cie Mauricienne d'Hypermarchés v Rengapanaiken*** *[2003 SCJ 233], in relation to provisions of the Labour Act akin to those of section 38(2) of the Employment Rights Act, the disciplinary hearing is not meant to be a mere "procedural ritual" to pay lip service to the requirement under the law that an employee be given a genuine opportunity to provide his explanations to his employer with a view to keeping his job (see also* ***Bissonauth v Sugar Fund Insurance Bond*** *[2005 PRV 68]).* **" (emphasis added)**

Therefore, it has not been established that whatever award Plaintiff received in the past was done in breach of the Conduct Risk Policy of Defendant.

In the present case, Plaintiff acceded to the request of the new client's wife and not the new client. She wanted to have an account opened for him while he was hospitalized for a few days in a private clinic because according to her, he had consumed too much alcohol, and she feared that he might spend the money he won for the lotto in the sum of about Rs 9 million.

Mr. Menelas was hospitalized for a few days for having consumed too much alcohol has not been confirmed from his treating doctor by Plaintiff. Further, at no time has it been established that Mr. Menelas phoned Plaintiff while hospitalized through his wife's phone or otherwise in order to reflect that in his right state of mind, he wanted to close his bank account at SBM bank and to open a new one at Defendant and in addition to deposit his winnings of the lotto in the sum of about Rs 9 million in his new account at Defendant. At no time Mr. Menelas said to Plaintiff that he wanted the Plaintiff to meet him in the lounge of the clinic where he was hospitalized in the presence of his wife and son-in-law and someone else for the onboarding process.

Therefore, Plaintiff clearly acted on what he was asked to do by Mrs. Menelas so that he started straight away with the onboarding process of Mr. Menelas once he reached the lounge of the clinic where Mr. Menelas was in the company of his wife and the two other persons. He started with the onboarding process without ascertaining from his treating doctor why he was admitted in that private clinic in the first place, whether he could understand the purport of the contract he was going to sign with the Defendant and when he was to be discharged from that clinic. Such a state of affairs leads to the unescapable conclusion that Mr. Menelas was led to

agree blindly to everything his wife wished in the state of mind he was at the material time which could only be with the sole helpless aim that his money he obtained from the lotto win in the sum of about Rs 9 million could be safely kept with Defendant in his new account.

It was only thereafter, when Mr. Menelas checked his account that he found out that about Rs 1.9 million was missing and for which Plaintiff was of no help but could only give him a statement of his account. Had Mr. Menelas taken more time to check his account, the possibility of a much larger amount having disappeared therefrom cannot be disregarded and again the Plaintiff would have helped him only by providing him with a statement of his account in the reduced sum and no more. Therefore, all along the onboarding process, Plaintiff had acted to the detriment of Mr. Menelas in breach of the Conduct Risk Policy as regards the confidentiality issue and the necessity to ascertain whether it was the venue chosen by Mr. Menelas himself and whether he was in a frame of mind he could understand how and where he was going to invest his money or whether he was going to deposit his lotto winnings in his existing account at SBM bank or he would have opened a new one with Defendant solely for the winnings or he would have closed the previous one or not. Such acts of Plaintiff led to the disappearance of about Rs 1.9 million from his account for which Plaintiff could not account for when as per the file of Defendant it was allegedly the son-in-law that defrauded Mr. Menelas and who was present during the onboarding process.

Thus, given that Plaintiff commanded a considerable level of trust and due diligence by reason of his excellent past performance in terms of his awards obtained which was extreme good performance on his part, such extreme misconduct from his part was beyond the stretch of one's own imagination which to all intents and purposes could not be condoned nor minimized, as no trust could ever be placed upon him again. Therefore, Plaintiff had clearly not been able to dissuade his Defendant employer so that he could have kept his job.

For all the reasons given above, I am convinced on a balance of probabilities that Defendant has discharged the burden of proof that rested upon it in that following the findings of the disciplinary committee in relation to the first charge and on the basis of the material of which it was aware or ought to have been reasonably aware at the time of the dismissal of Plaintiff, it in good faith had no other course of action but to terminate his employment so that his dismissal was not unjustified (see- **Moortoojakhan**(supra) and **Smegh**(supra)).

Furthermore, there is nothing to suggest that the Defendant employer relied on reasons other than those contained in the dismissal letter (Doc. D3) (see - **Babooa D v Mauritius Tourism Promotion Authority** [2025 SCJ 496]). Indeed, in **Babooa** (supra), the Supreme Court relied on the Privy Council decision in **Michel Lafresière v New Mauritius Hotels Ltd [2023 UKPC 38] (**wherein the decision of the Supreme Court in **Lafresière M v New Mauritius Hotels Limited** [2021 SCJ 244] was upheld on appeal), the relevant extract is given below:

*"In **Michel Lafresière v New Mauritius Hotels Ltd [2023 UKPC 38]** it was held that the only reasons on which the employer can rely before the Industrial Court to justify the dismissal are the reasons which it gave to the employee at the time of the dismissal."*

The amended plaint is accordingly dismissed with costs.

S.D. Bonomally (Mrs.) *(Vice President)*
29.10.2025