Guilliey L. v OCAPAC Mauritius Holding Ltd

2020 IND 9

Cause Number 347/16

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Mr. Luc Guilliey

Plaintiff

v.

OCAPAC Mauritius Holding Ltd

Defendant

Judgment

Defendant Company is the subsidiary of Oracle Corporation which is an American multinational engaged in the business of computer hardware and software.

Plaintiff is a French Citizen who entered into a written contract of employment with Defendant on 10 November 2014 in respect of the post of Territory Sales Representative for the region of Madagascar and Seychelles. Plaintiff's contract of employment with Defendant expressly provided that it would be governed by the laws of Mauritius.

Now, Plaintiff has averred that according to the said contract, the commencement date of his employment with Defendant is deemed to be 1 September 2002 in order to take into consideration Plaintiff's time of service with Oracle Systems Limited. Before being effectively located in Mauritius as from

December 2014, Plaintiff was based in Senegal and his contract of employment was governed by the law of Cyprus. When he was transferred to Mauritius, Plaintiff's annual basic salary was drastically reduced from USD 60,000 to Rs. 1,686,000(i.e. USD 48,000). However, in view of the legislation which governed his former contract of employment, he as employee accepted his new annual basic salary which was aimed at circumventing the provisions of the End of Year Gratuity Act 2001 intended by the Legislator by being unlawfully divided into 13 monthly instalments and the 13th instalment is unlawfully represented as the end of year gratuity. On the day of his termination of his contract of employment he was earning an annual total remuneration of Rs. 2, 863,526.29.

On 15 March 2016, Defendant communicated to Plaintiff a letter of warning for alleged poor performance whereby it threatened to terminate Plaintiff's contract of employment unless he concluded by 30 April 2016 three deals of a given amount which Plaintiff found totally unrealistic.

Through ongoing correspondence between the Plaintiff and Defendant, Plaintiff by a letter dated 24 May 2016 that by virtue of section 36(4) of the Employment Rights Act, the Plaintiff has considered that Defendant has unlawfully terminated his contract of employment by failing to pay his remuneration. In that same letter Defendant was amicably requested to pay to Plaintiff the sum of Rs. 10,603,014.59 due as a result of the said termination of Plaintiff's employment but the Defendant failed to do so.

Thus, Plaintiff is claiming the sum of Rs. 10,603,014.59 comprising of severance allowance, wages in lieu of notice as indemnity, end of year gratuity 2015, basic salary not paid in 2016, remuneration May 2016, end of year gratuity 2016 and local leaves not taken from the Defendant.

Defendant, for its part, has essentially denied liability and has averred that Defendant is a company within the Oracle group rather than the subsidiary of Oracle Corporation. It has further averred that Plaintiff started employment with Defendant on 1 February 2015 pursuant to the terms of his employment contract with Defendant and that Oracle System Limited was a separate legal entity within the Oracle group. Plaintiff on his own volition handed to Defendant his work equipment and access details on 24 May 2016 and left Mauritius about 1 June 2016 and flew back to France without the authorization of Defendant and he is deemed in the circumstances to

have abandoned work and has therefore unilaterally terminated his Employment Contract with Defendant.

At this stage, without the need to go into the merits of the case, I find that there is no valid cause of action disclosed *ex facie* the material/essential averments in the plaint.

It has not been averred when Plaintiff's written contract of employment with Defendant on 10 November 2014 governed by the laws of Mauritius was due to start let alone that prior to December 2014, Plaintiff was based in Senegal and his contract of employment was governed by the law of Cyprus. Furthermore, there are no essential/material facts averred in the plaint leading the Plaintiff to conclude that the commencement date of his employment with Defendant is deemed to be on 1 September 2002 in order to take into consideration Plaintiff's time of service with Oracle Systems Limited let alone that the Court is in the dark as to whether the latter company was also a subsidiary of Oracle Corporation and whether Plaintiff was employed in the same capacity in order for the Plaintiff to further conclude a drastic reduction in his annual basic salary. Moreover, it has not been averred whether the contract of employment which was dated 10 November 2014 was terminated by Plaintiff or Defendant and when it was terminated in order to warrant the different items claimed by the said Plaintiff.

At this particular juncture, I find it appropriate to quote an extract from the case of **New Beau Bassin Co-operative Store v Juggroo** [1980 MR 320] which reads as follows:

"A cause of action is constituted by the averment of facts which, if denied, require to be proved to enable a plaintiff to obtain a remedy he seeks. The nature and extent of the remedy sought is a legal consequence of those facts and, as such, is a matter of law which the court has to apply" (underlining is mine).

It is apt to refer to the case of **Gungadin J. v The State of Mauritius Anor.** [2015 SCJ 193] where it was tersely stated that to decide as to whether a plaint discloses a cause of action, the essential averments contained in the plaint with summons will have to be examined closely. After having complied with that exercise, the matter was set aside without recourse being had to particulars in order to render valid or to cure that otherwise invalid cause of action. This is because, it is not the function of particulars to take the place of essential averments in the plaint in order to

fill the gaps to make good an inherently bad plaint (as per Scott L.J. in **Pinson v Lloyds & National Foreign Bank Ltd. [1941] 2 KB 72 at 75**); see also – **Charlie Carter Pty Ltd v. The Shop, Distributive and Allied Employees Association of Western Australia (1987) 13 FCR 413 at 419** and **H 1976 Nominees Pty Ltd v. Galli (1979) 30 ALR 181 at [13] – [23]** which pertain to a Common Wealth jurisdiction namely Australia derived from the English rules of procedure like ours.) - otherwise any bogus or nonsensical plaint will be endlessly cured by way of particulars which is against the overriding principle of procedural fairness ensuring proportional expenses and thus undermining faith in our civil justice system as fundamentally defective plaints would *de facto* be non-existent. This is because the purpose of particulars is to define the generality or vagueness of material facts already pleaded with a sufficient degree of specificity to convey to the other party the case that it has to meet by the evidence *ex facie* the plaint on the basis of the facts pleaded which if proved, are sufficient to establish the cause of action relied on (see - **Danjoux v Partnership Bangaroo - Danjoux and Cie** [2001 MR 64] **; Spedding v. Fitzpatrick (1888) 38 Ch.D. 410; 59 l.t.492, C.A. ; Cassim (supra)** and **Premchand I. & Ors. v. Jagoo A.R. & Ors.**[2013 SCJ 184]).

Thus, particulars form part of the pleadings as a matter of concept only and no more.

Now, the provision of the law regulating the contents of a plaint is provided by **Rule 3(1) (b) of the Rules of the Supreme Court 2000** as follows:

"3. Contents of plaint with summons

(1) A plaint with summons shall –

(a) (…)

(b) State the substance of the cause of action;

(…)"

Given that our District, Industrial and Intermediate Court Rules 1992 are silent on that issue, we follow Supreme Court Rules for guidance as no repugnancy whatsoever is being caused to our rules of court (see - **Jhundoo v. Jhurry**[1981 SCJ 98]).

An excerpt from the case of **Mauritius Commercial Bank Limited v The Mauritius Union Assurance Company Limited** [2010 SCJ 97] affords a useful illustration of the term "substance of the cause of action" meaning all material facts necessary for the purpose of formulating a complete cause of action as reproduced below:

" Having found that the requirement of our relevant **Supreme Court Rule** that the plaint *" **shall state the substance of the cause of action**"* has been satisfied, (*…)The defendant is entitled to know what it is that the plaintiff alleges against him……." in* ***Odgers on the Principles of Pleadings and Practice****, under the heading "The function of Pleadings" or "Indeed a plaintiff need not plead law, yet it is his duty to* ***state with precision all the material facts "necessary for the purpose of formulating a complete cause of action"***, referred to in **A.Z.A.A. Cassim v The United Bus Service Co. Ltd** [1986 MR 242]."

Moreover, **Rule 13 of the Rules of the Supreme Court 2000** provides that:-

> *"**Every pleading shall clearly and distinctly state all matters of fact that are necessary to sustain the plaint**, plea or counterclaim as the case may be."*

Indeed, the cursus of our case law shows a rigorous application of Rule 3(1) (b) because procedural fairness imposes on the Plaintiff an undeniable duty to inform the Defendant in a concise and precise manner what it is that the Plaintiff is alleging against it. It boils down to mean that *"a cause of action"* comprises of *"every fact which is material to be proved to enable the Plaintiff to succeed; in other words, every fact which, if traversed, the plaintiff must prove to obtain judgment"* (see- **Heera v Ramjan & Ors.**[1976 MR 220]) *"so that a plaint which will not aver all material facts would, therefore, not disclose a cause of action"* (see - **Geerjanan P. v The Mauritius Commercial Bank Ltd** [2006 SCJ 320]**, Compagnie Mauricienne de Textile Limitée v. Scott Shipping International Ltd.**[2015 SCJ 8]**, Metex Trading Co.Ltd. v The State of Mauritius & Ors.**[2014 SCJ 219]**, Constantin Roland v**

Jhuboo Scilla Par Vaty [2014 SCJ 221] and **Tostee J.Y. v Property Partnerships Holdings (Mauritius) Ltd** [2015 SCJ 41]).

As explained by the learned author **Odgers** on High Court Pleading and Practice 23 ed. at page 124:

*"The function of pleadings then is to ascertain with precision the matters on which the parties differ and the points on which they agree; and thus to arrive at certain clear issues on which both parties desire a judicial decision. In order to attain this object, it is necessary that the pleadings interchanged between the parties should be conducted according to certain fixed rules (…)" (**emphasis added**).*

Indeed, the case of **Tostee (supra)** has highlighted the importance of pleaded facts which reads as follows:

*"The case of **Ramjan v Kaudeer**[1981 MR 411][1981 SCJ 387] may also be referred to whereby the court had relied upon cases of **Chetty v. Vengadasalon**[1901 MR 22], **Deena v. Malaiyandee 1940 Pt.II MR 156** and **Ramdharry v. Dhumun**[1942 MR 108] as being examples of judgments which have been quashed on appeal on the ground that the decisions were based on issues which did not appear in the pleadings.*

*The case of **Ramjan v Kaudeer** (supra) further referred to certain passages of Bullen and Leake, and Jacobs Precedents of Pleadings 12th Ed. which were quoted in the judgment of **Jagatsingh and Walter v. Boodhoo (supra)** and explained that once a party has stated the facts on which he relies, these facts are binding and the Court cannot ground its judgment on other facts which may come to light in the course of the trial" (**emphasis added**).*

The word "material" means those facts, which are necessary for the purpose of formulating a complete cause of action, and if any one 'material' fact is omitted, the statement of claim is bad (see - **Odgers Principles of Pleading and Practice, 22 ed. at p.98; Bruce v Odhams Press Ltd [1936 1 KB, at p. 697**]. **Odgers (supra) at p.100** goes on to state that:

"Each party must state his whole case. He must plead all facts on which he intends to rely, otherwise he cannot strictly give any evidence of them at the trial. The plaintiff is not entitled to relief except in regard to that which is alleged in the pleadings and proved at the trial (per Warrington J. in ***Re Wrightson [1908] 1 Ch. at p. 799****)".*

The observations of Lord Esher M.R. in **Read v. Brown (1888) 22 Q.B.D. 128** at page 131 cited with approval in the case of **Premchand I. & Ors.v Jagoo A.R. & Ors.**[2013 SCJ 184] further illustrates the meaning of *"material facts"* as reproduced below:

"It has been defined in Cooke v. Gill (Law Rep.8 C.P.107) to be this: every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."

This is in line with the reasoning in the case of **Compagnie Mauricienne de Textile Limitée (supra)**.

Therefore, the threshold needed to be reached in order to formulate a complete cause of action cannot be based on a mere subjective assumption nor on a mere reliance on the evidence to be adduced to perfect that lack of precision in the material facts, nor on particulars and nor on the plea of the Defendant to fill those

gaps. As pointed out by the learned author **Odgers** on High Court Pleading and Practice 23 ed. at page 145 at para. (iv): *" In the first place, material facts must be stated clearly and definitely. (…) Pleadings are useless unless they state facts with precision."*

In other words, ***l'action est un voie de droit; le titulaire de l'action doit transformer cette faculté en acte; cet acte est précisément la demande en justice*** **which means that** ***la demande est la puissance passée en acte.***

As per **Rép.pr.civ.Dalloz Tome 1**, page 4, notes 1,4: *"**L'action en justice**"* has been defined as:

1. *" **le fondement de la recevabilité des prétentions**.(…) Avoir une action, ou avoir le droit d'agir, c'est donc, pour tout plaideur, demandeur ou défendeur, avoir une prétention recevable.(…)*

4. *En droit positif, cela doit être souligné d'emblée, **la recevabilité des prétentions est subordonnée à plusieurs conditions**.(..) En réalité, il convient de distinguer plusieurs sortes de conditions. Selon S.GUINCHARD et F.FERRAND, "on peut, dans cette perspective, **distinguer les conditions relatives à la personne qui agit**, **celles qui concernent l'objet de la demande**, **enfin celles qui précisent dans quel délai il faut agir**." (Procédure civile. Droit interne et droit communautaire, 28e é.,2006, Précis Dalloz, no. 120). **Une formule** de G.CORNU et J.FOYER(Procédure civile, 3e éd., 1996, coll. Thémis, PUF, p.322) **résume** de manière frappante **la triple exigence qui préside à l'ouverture de l'action en justice : "N'importe qui n'a pas le droit de demander n'importe quoi, n'importe quand à un juge"** (V. égal R. PERROT, Institutions judiciaries, 12e éd., 2006, Précis Domat, Montchrestien, no. 536)."* **(emphasis added)**

Rép.pr.civ.Dalloz Tome I page 18 & 37 notes 93, 215:

"*93. (…) L'action est une voie de droit, un simple pouvoir virtuel que son titulaire peut préférer ne pas exercer, soit par souci de conciliation, soit pour ne pas courir les risques d'un procès. Mais si le titulaire de l'action veut effectivement exercer cette voie de droit et saisir les tribunaux compétents, il doit alors transformer cette faculté en acte: et cet acte est précisément la demande en justice[…] en un mot la demande*

en justice est la puissance passée en acte"(R.PERROT, Cours de droit judiciare privé,op.cit.,p.40; S.GUINCHARD et F.FERRAND, op.cit.,no.94). L'action précède donc la demande. C'est la raison pour laquelle elle peut être l'objet d'actes juridiques alors même qu'aucune demande n'a été formée (G.CORNU et J.FOYER,op.cit.,p.313; G.WIEDERKEHR, article préc.[Mélanges Simler],spéc.p.905 et s.).

215. L'idée que ***l'ouverture de l'action est subordonnée à l'existence d'un "intérêt légitime à agir" est traditionnelle****. Un adage de l'Ancien droit l'exprime avec force et concision:* ***"pas d'intérêt, pas d'action"*** *(V.H.ROLAND et L.BOYER, Adages du droit français, 4e éd., 1999, Litec).9.(…)"* **(emphasis added)**

Therefore, it is abundantly clear that all the material facts/elements for a valid cause of action must be averred in the plaint.

For the reasons given above, in view of the factual flaws found in the Plaintiff's action namely lack of precision or specificity as regards the material facts averred which is an imperative of the law, I hold that no valid cause of action has been formulated against the Defendant. Thus, being in duty bound, I dismiss the Plaintiff's action.

S.D. Bonomally (Mrs.) *(Acting Vice President)*
8.6.2020