

Bhoyroo v National Computer Board

2023 IND 25

CN635/19

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Ghansiam Rao BHOYROO

Plaintiff

v/s

NATIONAL COMPUTER BOARD

Defendant

RULING (NO. 2) (THE DEFENDANT BOARD IS OBJECTING TO THE PLAINTIFF
SUMMONING AS HIS WITNESS THE OFFICER REPRESENTING THE DEFENDANT BOARD
TO PRODUCE MINUTES OF BOARD MEETINGS)

By way of *Proecipe* dated 11-09-19, the Plaintiff is claiming from the Defendant Board:

- 1) His reinstatement in his employment with the Defendant Board as Manager thereof, the refund by the Defendant Board of his salary for the period starting as from the date of his termination of employment up to the date of his reinstatement, and the payment of such indemnities for any sum that should have accrued to him in his continued employment; and
- 2) In the alternative, the total sum of Rs5 458 650/- representing Indemnity In Lieu Of Notice, Salary for the month of August 2019, Severance Allowance, Refund of Leaves, and Passage Benefit, together with Interest as from the date of termination of employment to

the date of final payment, for the unjustified termination of his employment by the Defendant Board.

The Defendant Board has denied the said Claim in its Plea dated 16-09-2020 and moved for the *Proecipe* to be dismissed with Costs.

The Parties were each assisted by Learned Counsel.

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

In the course of the Plaintiff's Case, Learned State Counsel objected to the Defendant summoning Mrs V. Mulliah (hereinafter referred to as the Witness) to call her as his Witness to produce Minutes of two Board Meetings on the following grounds:

- 1) No legal Basis;
- 2) Abuse of Process and potential Breach of Ethics on the part of the Plaintiff; and
- 3) Breach of the Law.

The matter was therefore fixed for Arguments.

Case for the Defendant

As per the Particulars provided by the Defendant Board, it is objecting to the Witness being summoned on the following grounds:

- 1) No legal Basis: There is no legal basis allowing the Plaintiff to force a Party which he is suing to come as a Witness in the case;
- 2) Abuse of Process and potential Breach of Ethics on the part of the Plaintiff: The Plaintiff would potentially be breaching Clause 11.3(c) and (d) and Clause 12.1 and 12.2, and Abuse of Process; and
- 3) Breach of the Law: By seeking to summon the Witness, who is the Representative of the Defendant Board in the present matter, the Plaintiff would be in breach of the Law, given the provisions of **s. 13(1)(b) and/or (c) of the National Computer Board Act (hereinafter referred to as NCBA)**, which infringement is of a penal nature. It is also not open to the

Plaintiff to waive **s. 13 of NCBA** for the Witness or any other Officer where the information sought is governed by **s. 13 of NCBA**.

In relation to the first limb of objection taken by the Defendant Board, Learned State Counsel submitted that the “Plaintiff cannot by this procedure of summon, force the representative of the defendant to come and depone in view to support his case”, in light of the provisions of **s. 13 of NCBA**. Learned State Counsel relied on the Authority of **Nursimulu & Ors v MES & Ors [2014 SCJ 294]** in support of her Submissions.

In relation to the second limb of the objection, Learned State Counsel relied on Clauses 11.3(c)(d), 12.1, and 12.2 of the Code of Ethics for Barristers, and on the criminal offence created by **s. 13(2) of NCBA** in support of her Submissions that “the procedure as set out would amount to an abuse of process in the light of the clauses”, and went on to submit that there “is a risk of a breach of these clauses [...] should the representative of the NCB be summoned to depone on matters which are covered by section 13 in her capacity as employee, an officer, of the NCB”.

Learned State Counsel also relied on the Authorities of **Goojrah v Seni [2011 SCJ 150]** and **Jugessur v Jugessur [2021 SCJ 60]** in support of her Submissions that there was a need to prevent abuse, and that it would be abusive, in light of the parameters of what constitutes an Abuse of Process and of **s. 13(2) of NCBA**, to allow the Plaintiff to proceed with the said Summons, as by summoning the Witness, “one cannot validly and one cannot [...] improperly circumvent” the provisions of **s. 13(2) of NCB**.

Learned State Counsel referred to the Authorities of **Migale v Punchoo [1943 MR 55]**, and **Sodoo v Rengasamy [2020 SCJ 45]** as regards the principle of Bad Faith.

Learned State Counsel submitted that the Defendant Board and/or its Officers could not be expected to override their statutory obligations.

Learned State Counsel went on to submit that “it would be abusive, oppressive, improper [...] to have the summons be proceeded with”, relying on the Authorities of **Mauritius Turf Club v Lagesse [1993 MR 267]**, **Sodoo (supra)**, **Hunter v The Chief Constable of West Midlands Police [1982] AC 529** and **Star Ltd v Volcano Agro Sons Ltd [2016 SCJ 320]** as regards it amounting to an Abuse of Process.

As regards the third limb of the objection taken by the Defendant Board, Learned State Counsel submitted inter alia that were the Plaintiff allowed to summon the Witness, this would in effect result in the Witness breaching her obligation to Secrecy pursuant to **s. 13 of NCBA**, given the Plaintiff was seeking to delve into matters pertaining to the affairs of the Defendant Board, such that it would be “improper and invalid to entertain the summon, proceed on the basis of the summon in that respect”.

Case for the Plaintiff

Learned Counsel for the Plaintiff submitted firstly that the objection taken was vague.

The second point raised by Learned Counsel for the Plaintiff was that setting aside of Summons was not within the Jurisdiction of the Trial Court, referring to the Authorities of **Dabee v Hurnam [2008 SCJ 6]**, **Attorney General v Hurnam [2017 SCJ 249]**, and **Morvan v Fullee [1994 SCJ 242]**.

Thirdly, it was submitted on behalf of the Plaintiff that the objection taken by the Defendant Board was premature, given the Plaintiff had not yet been cross-examined, and therefore the stage of calling the Witness had not been reached yet.

Learned Counsel for the Plaintiff went on to submit that it was uncalled for to suggest that Counsel was going against the Code of Ethics for Barristers and that the Plaintiff was of Bad Faith, and further submitted that it was not right for the Defendant Board to prevent the Plaintiff from proceeding with his case, which attempt to undermine amounted to an Abuse of Process, bearing in mind the provisions of the Constitution.

On the issue of Good Faith, Learned Counsel also explained that the Witness was an employee of the Defendant Board, and was a Party to the issue at stake, her being the Secretary to the Board, and therefore the Witness having recorded the Proceedings was the one habilitated to produce same. Learned Counsel for the Plaintiff highlighted that from the outset, in the Pleadings, it had been disclosed that the Witness was an important Witness for the Plaintiff's case, and the

Defendant Board chose the Secretary of the Defendant Board, who is the custodian of the documents, to represent the Defendant Board in the present matter.

Learned Counsel for the Plaintiff then submitted that unauthorised person¹ does not cover lawful authority, and that it could not be held that what the Defendant Board was doing was secret.

Learned Counsel for the Plaintiff further submitted that the Summons were not for an illegal purpose, and were objected to prematurely, and filed the Authority of **Lamco International v Seagull [1991 MR 226]** in support of his Submissions that even when there was no challenge to the evidence, the Court could still form the view that it could not safely rely on same.

In Reply

In Reply, Learned State Counsel reiterated the principles set out in the Authority of **Nursimooloo (supra)** in support of her Submissions.

Analysis

The Court has duly considered the Submissions of each Learned Counsel, and has given due consideration to the Authorities referred to, and submitted by, each Learned Counsel in the course of the present Arguments.

Whilst at no stage of the Proceedings did the Defendant Board formally move for the said Summons to be set aside, by asking the Court to consider that the said Summons not be proceeded with, in effect, the Defendant Board is asking the Court to prevent the Plaintiff from proceeding to summon the Witness to produce the documents mentioned in the Summons dated 20-07-22, which is equivalent to asking the Court to set aside the said Summons.

¹ S. 13(1)(c) of NCBA

Before proceeding to consider the grounds of objection raised by the Defendant Board to the said Summons, the Court is first to determine whether it has Jurisdiction to set aside the said Summons.

In light of the principles set out in the Authorities of **Ahmine v Chady & Another** [[\[2013 SCJ 264\]](#)] and **Honourable Attorney General v Hurnam** [[\[2017 SCJ 249\]](#)], it is settled Law that the proper Forum for an Application to set aside a Summons is the Supreme Court (be it the Trial Court or not ²), and hence the Industrial Court has no Jurisdiction to set aside the said Summons issued on the Plaintiff's behalf.

In light of all the above, there is no justification for the Court to embark upon an analysis of the grounds of objection raised by the Defendant Board in relation to the said Summons.

Conclusion

In light of all the material on Record, all the factors highlighted above, and for all the reasons given above, the Court finds that it has no jurisdiction to entertain the Motion of the Defendant Board objecting to the said Summons, and the said Motion is therefore set aside.

The Parties are invited to take a Stand in light of the present Ruling.

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

[Intermediate Court (Financial Crimes Division)]

[Date: 25 April 2023]

² Penultimate paragraph of the Authority of **Honourable Attorney General (supra)**