

OSHI v Les Moulins de la Concorde Ltée

2025 IND 63

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 70/2023

OSHI

v.

Les Moulins de la Concorde Ltée

JUDGMENT

1. The Accused stands charged for having unlawfully failed to ensure, so far as is reasonably practicable, the safety, health and welfare at work of one of its employees, in breach of sections 5(1) and 94(1)(i)(vi) of the Occupational Safety and Health Act 2005 (OSHA). The Accused has, through its representative, pleaded not guilty to the information.

2. The prosecution led evidence to the effect that an accident at work occurred on 29 January 2022 at the premises of the Accused company whereby one Mamode Raffick Nabeebacus got injured. Occupational Safety and Health Officer Jankee, who enquired into the matter, testified as to her findings and filed a series of documents including photographs of a stepladder involved in the accident (**Documents B1 to B5**) and her report (**Document J**). According to that report, the said Mamode Raffick Nabeebacus, who was employed by the Accused as welder, was standing on a stepladder at a height of about 110 cm and was performing reinforcement welding works on a metal structure found at a height of about 3 metres. The stepladder suddenly slipped and fell, and Mr. Nabeebacus lost his balance and hit his head against a metal bar. Mr. Nabeebacus remained suspended until he was provided help by his colleague. Mr. Nabeebacus was conveyed to hospital. His medical examination

revealed head trauma **(Document A)** requiring his admission for treatment. He was discharged from hospital after four days and was given five days' rest.

3. Mrs. Jankee stated that she first called at the locus of the accident on 09 February 2022 and observed that the stepladder was made of aluminium with no locking system to its spreader. The feet of the stepladder were not fitted with a rubber base and were not in a good condition. There was no top shelf on the stepladder which was 178 cm high. The work to be performed was at a height of 3 metres. Mrs. Jankee related in Court what Mr. Nabeebacus told her about the work he had to perform at the material time and the circumstances leading to the accident.

4. Mr. Nabeebacus testified and explained that whilst he was performing welding works, the stepladder suddenly closed, causing him to lose his balance. He had to hold on to the metal structure he was working on – *“Par malheur tréteau la ine balancé, ine nek ferme ène coup. Mo la main in tini coumsa même, mo tini dans l’air, dans vide. Mo la tête tappe are ferraille la ine casser. Mo la tête cassé derrière.”* Mr. Nabeebacus confirmed that he was provided with all required equipment. He was alone when the accident occurred. Mr. Nabeebacus stated that he never received any training from his employer.

5. Mr. Nabeebacus strongly asserted that the stepladder which he used on the material day had steps on one side only. He stated that the photographs produced by the enquiring officer did not show the stepladder involved in the accident. Mr. Nabeebacus did not recall whether he had participated in any reconstruction exercise.

6. Mr. Labonte, who acted as supervisor to Mr. Nabeebacus, was called as witness for the prosecution. On the day in question, he was not on the same floor as Mr. Nabeebacus. He was watching out for any potential fire break out on a different floor. Mr. Labonte did not witness the accident but attended to Mr. Nabeebacus when the latter shouted for help.

7. No evidence was adduced on behalf of the Accused. Its version is contained in its out-of-court statement **(Document C)**. It is a denial of the charge.

8. According to section 5(1) of the OSHA:

“5. General duties of employers

(1) Every employer shall, so far as is reasonably practicable, ensure the safety, health and welfare at work of all his employees.”

By virtue of section 94(1)(i)(vi) of the OSHA, any contravention of the above provision constitutes an offence.

9. It is trite law that the duty imposed on employers under the above enactment is not restricted to providing appropriate equipment to employees but extends to the provision of such information and training as is necessary to ensure, so far as is reasonably practicable, a safe work environment. In cases of the present nature, it is incumbent on the prosecution to establish that an employer has failed to comply with its statutory obligation. The latter may then raise a defence of “*reasonable practicability*” under section 96(6) of the OSHA. That provision reads:

“96. Special provisions as to evidence

...

(6) In any proceedings for an offence under any provision of this Act consisting of a failure to comply with a duty or requirement to do something so far as is practicable or so far as is reasonably practicable, or to use practicable means or to take practicable steps to do something, it shall be for the accused to prove that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means or step than was in fact used or taken to satisfy the duty or requirement, as the case may be.”

10. Referring to English authorities on the subject – where similar provisions exist – and quoting from **R v. Chagot Ltd and others [2008] UKHL 73**, the Supreme Court in **Director of Public Prosecutions v. Mauritius Meat Authority (2024) SCJ 209** held:

“These duties are not, of course, absolute. They are qualified by the words “so far as is reasonably practicable” ...

What the prosecution must prove is that the result that those provisions describe was not achieved or prevented.

Once that is done a prima facie case of breach is established. The onus then passes to the defendant to make good the defence which section 40 provides on grounds of reasonable practicability ...”.

11. Furthermore, in **Talbot Fishing Co. Ltd. v Ministry of Labour & Industrial Relations (Occupational Safety and Health Inspectorate) (2006) SCJ 76**, the Supreme Court highlighted the following:

*“It is relevant to point out that the onus of proving that it was not reasonably practicable to comply with the obligations laid under the Act, lied on the appellant company, although the burden could be discharged merely on a balance of probabilities – vide **Halsbury’s Laws of England, 4th Edition, Reissue Vol 20 (1) para 624.**”*

12. In the case at hand, the prosecution relied extensively on purported defects on the stepladder provided by the Accused to the injured person. Mrs. Jankee even produced photographs of the said stepladder and highlighted its flaws. However, the evidence falls short of establishing that the stepladder that was used on the material day by Mr. Nabeebacus is the very stepladder whose photographs were produced in Court by the prosecution witness. When confronted with those photographs, Mr. Nabeebacus unhesitatingly asserted that the stepladder shown was not the one which he used on the day of the accident.

13. I note that Mrs. Jankee proceeded on the locus of the accident for the first time some 2 weeks following the occurrence, which could explain the confusion. I also note nevertheless that, once that inconsistency arose, no evidence was forthcoming to clarify the situation.

14. It is the Accused’s version that the accident occurred because Mr. Nabeebacus made an incorrect use of the stepladder provided to him. According to the employer, when the employee completed the works on one side of the metal structure, he leaned so as to access the other side instead of switching sides on the stepladder. That created an imbalance which caused the stepladder to slip and fall. Mrs. Jankee admitted that if an employee attempts to switch positions without going down the stepladder, same would create an imbalance. On that note, it is worth highlighting that the enquiring officer conceded during her testimony that failure to confront the

injured person to that aspect of the company's version, and to obtain his reaction in relation thereto, rendered the investigation incomplete and unfair.

15. Moreover, it is the company's version that the system of work in place was safe, and that the employees had been provided with adequate training and information. **Documents D to H** lend credence to that assertion, as they indicate that the injured person had received appropriate training and instructions for the work he was involved in. Furthermore, Mrs. Jankee's enquiry revealed that all required protective equipment was made available to employees. She confirmed that it is not possible for an employee to have a helmet when wearing a welding face shield.

16. In view of all the above, I am satisfied that the Accused did what was reasonably practicable to ensure the safety, health and welfare at work of its employees. I have not been convinced that the system of work adopted by the employer was in any manner unsafe or that the Accused in any manner failed in its statutory duty, leading to the injury to Mr. Nabeebacus as particularised in the information.

17. I, therefore, find that the prosecution has failed to establish its case beyond reasonable doubt. I dismiss the charge.

02 September 2025

M. ARMOOGUM

Magistrate