

Niole v MRA

2022 IND 26

CN62/17

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Niole Noel Evans Norbert

Plaintiff

v/s

The Mauritius Revenue Authority

Defendant

RULING (NO. 1) (Plea In Limine Litis)

By way of Plea, the Plaintiff is claiming from the Defendant the sum of:

- 1) Rs3 472 975/- as Severance Allowance;
- 2) Rs311 290. 63/- in respect of 83.70 days of Sick Leave and 38.56 days of Annual Leave accrued benefits; and
- 3) Accrued Interests pursuant to s. 46(11) of the **Employment Rights Act** (hereinafter referred to as **ERA**) of 12% “per annum on the above amount payable from the date of termination of employment, i.e. 4th July 2016 to the date of payment”, with Costs;

for his wrongful and illegal dismissal.

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

The Plaintiff was assisted by Learned Counsel, and the Defendant was assisted by Learned State Counsel.

The Proceedings were held in English for the purposes of the Arguments on the Plea In Limine Litis, which reads as follows:

Defendant moves that the Plaintiff be dismissed with costs inasmuch as-

- (a) no one month's previous written notice of the action, suit, proceeding and of the subject matter of the complaint, has been given by the Plaintiff to the Defendant prior to the lodging of the present case;
- (b) it discloses no cause of action as the Plaintiff has failed to aver bad faith on the part of the Defendant.

Case For The Defendant

In relation to the first limb of the Plea In Limine Litis, Learned State Counsel submitted to the effect that the Plaintiff could not proceed with the present matter as no Notice had been served on the Defendant prior to the lodging of the present matter, relying on the provisions of **s. 4** of the **Public Officers' Protection Act** (hereinafter referred to as **POPA**), **s. 22(2)** of the **Mauritius Revenue Authority** (hereinafter referred to as **MRAA**), and inter alia the Judgment of **Bhoonah v Mauritius Revenue Authority** [\[2018 SCJ 103\]](#) in support of her Submissions.

In relation to the second limb of the Plea In Limine Litis, Learned State Counsel's Submissions were in essence that the Defendant benefitted from the immunity afforded to Public Officers by virtue of **s. 22(2)** of the **MRAA**, and that given the Plaintiff had failed to aver bad faith of the Defendant in the Plaintiff, the Plaintiff was precluded from adducing evidence to prove such bad faith and thereby engage the Defendant's liability.

In Reply, Learned State Counsel submitted that it would not be appropriate to import restrictions which do not exist into the provisions of **s. 22(2)** of the **MRAA**, and distinguished the case of **Sumeru Ltd v Rodrigues Regional Assembly** [\[2018 SCJ 70\]](#) referred to by Learned Counsel for the Plaintiff.

Case For The Plaintiff

In relation to the first limb of the Plea In Limine Litis, Learned Counsel for the Plaintiff confirmed that no Notice had been served on the Defendant, and submitted to the effect that the Defendant was being sued not as Tax Collector, but as Employer, such that there was no Notice which needed to be served, relying inter alia on the cases of **Sumeru (supra)** and **Sunassee v The Government of Mauritius** [\[1998 SCJ 335\]](#).

In relation to the second limb of the Plea In Limine Litis, Learned Counsel for the Plaintiff submitted that the present matter was a Contract of Employment, and therefore the issue of bad faith did not arise.

Learned Counsel for the Plaintiff further submitted that paragraphs 5 and 9 of the Plea did cover the issue of bad faith, so that the Plea in relation to bad faith was premature, as the Court would properly assess the Plea after hearing evidence and cross-examination of the Witnesses for each Party.

Learned Counsel for the Plaintiff distinguished the case of **Calzatura Ltd v The Director General Mauritius Revenue Authority** [\[2013 SCJ 420\]](#), as it was a case for Damages, and not a contract, and especially not a contract of employment.

Analysis

The Court has given due consideration to the Submissions of each Learned Counsel, and has duly considered the Acts, Authorities, and Cases referred to in the course of their respective Submissions.

Plea In Limine Litis Premature

Learned Counsel for the Plaintiff submitted to the effect that the Plea In Limine Litis raised by the Defendant in its Amended Plea was premature, as the Court would determine the issue of bad faith in light of the evidence to be adduced.

The Court finds the following passage from the Authority of **Avigo Capital Managers Pvt Ltd v Avigo Venture Investments Limited** [\[2019 SCJ 158\]](#) pertinent to the determination at hand:

(e) Points which are more appropriately raised *in limine* are those which, by reliance on the pleadings only and without having recourse to the production of evidence, or by the production of a significantly limited amount of evidence in relation to the point raised *in limine*, could dispose of the case and avoid protracted hearing of the whole evidence in the case.

In the present matter, the Defendant is raising two points in its Plea In Limine Litis, namely that no one month's written Notice was served on the Defendant prior to the lodging of the case, and that the present matter discloses no cause of action against the Defendant as the Plaintiff has failed to aver bad faith on the part of the Defendant.

The Court is of the considered view that the nature of the said two points is such that they are to be determined on the basis of the Pleadings on Record only, and not on the basis of the evidence to be adduced in the course of the Trial itself.

As to the question of whether a Notice was served on the Defendant, Learned Counsel for the Plaintiff confirmed that no such Notice was served on the Defendant.

And the question of whether bad faith has been averred in the Plea is to be determined on the basis of the Plea itself.

The Court finds, in the light of all the above, that the Plea In Limine Litis is not premature, and is to be dealt with on the basis of the Pleadings only, without any reliance on evidence.

One Month's Written Notice To Be Served

Learned State Counsel referred to several Authorities in support of her Submissions to the effect that there was a requirement for a Notice to be served on the Defendant, even in cases of employment, and that one should refrain from importing restrictions into the provisions of the Law.

The Plaintiff justified his failure to serve a Notice on the Defendant, by making a distinction between any actions against the Defendant in the performance of its functions and duties as Tax Collector, and any actions arising against the Defendant as Employer by virtue of a Contract of Employment, which the present matter is, given it is being heard before the Industrial Court.

The Court relies on the Authority of **DSA Company Ltd v The Ministry of Public Infrastructure & Anor and Super Construction Co Ltd v State of Mauritius** [\[2013 SCJ 485\]](#), a decision of the Full Bench, which precisely addressed the divergence on the scope and applicability of **s. 4(1)** of **POPA** by two benches of the Supreme Court, which specifically analysed inter alia the decision of **Sunassee (supra)** (relied upon by Learned Counsel for the Plaintiff), and which concluded that, contrary to what was held in the decision of **Sunassee (supra)**, “The clear and unambiguous words “*every civil action, suit or proceedings*” in section 4(1) and (2) of the POPA mean what they specifically say and include civil action based on contract as well as in tort.”

It is crystal clear in light of the above, that no distinction is made between actions which arise out of Contract or Tort against the State, for the purposes of the **POPA**.

Now, Learned Counsel for the Plaintiff submitted that a distinction ought to be made for the State in its capacity as Employer.

Learned Counsel for the State submitted for her part that no limitation ought to be imported into the Law.

The Court is of the considered that no restriction is to be read into the relevant sections of the **POPA**, in light of the following passage from **DSA (supra)**:

13.6. [...] Section 1 of the SPA¹ reads:

“Where a person has a claim against the State in respect of a breach of contract, the claim may be enforced as of right by proceedings taken against the State for that purpose in accordance with this Act.”

[...]

13.8 The SPA therefore covers both liability of the State for breach of contract and in tort and it is not by singling out section 2 of the SPA to link it with section

¹ **State Proceedings Act [Act No. 5 of 1953]** (hereinafter referred to as **SPA**)

4(1) and (2) of the POPA that one can affirm with any small degree of conviction that these provisions relate to the liability of the State in tort only. Section 1 of the SPA still exists and co-exists with section 2.

(E) The Golden Rule of Interpretation:

14.0 Another reason for reaching our decision at paragraph 13.8 above is the clarity of the language of section 4(1) and (2) of the POPA which speaks of “*every civil action, suit or proceedings*” and “*no civil action*”. Those words are unambiguous and must be given their ordinary meaning and would include action in contract as well. As was stated in **P G v District Magistrate of Rose Hill and Ah Koon** [\[1914 MR 38\]](#), “*the intention of the legislature is invariably to be accepted and carried into effect, whatever may be the opinion of the Judicial interpreter of its wisdom and justice. If the language admits of no doubt or secondary meaning, it is simply to be obeyed, without more.*”

Further, the Court held in the Authority of **DSA (supra)** that “ the legislator is deemed to know the law. If he decided not to make a distinction between contract and tort in POPA and use instead the generic and general term “*Every civil action*”, it would be judicial legislation for the Courts to insert that distinction. That would violate the doctrine of Separation of Powers. The only distinction that POPA makes is the distinction between civil and criminal. It does not expressly or impliedly create any sub-heading under civil action for contract and tort.”.

The Court therefore finds that no distinction ought to be made between a Contract the State enters into as Employer and other Contracts for the purposes of **POPA**.

The Court also bears in mind the provisions of **s. 22** of the **MRAA**:

22. Protection from liability

(1) No liability, civil or criminal, shall be incurred by the Authority or any member or employee in respect of any act done or omitted in the execution in good faith of his or its functions or duties under this Act.

(2) This section shall be in addition to, and not in derogation from, the Public Officers' Protection Act, and for the purposes of that Act, every member and employee shall be deemed to be a public officer or person engaged or employed in the performance of a public duty.

It is clear from the provisions of **s. 22(2)** of the **MRAA** that for the purposes of **POPA**, every member and employee of the **MRA** shall be deemed to be a public officer or person engaged or employed in the performance of a public duty.

By virtue of the said section, the provisions of the **POPA** apply to the members and employees of the **MRA**.

In light of all the above, the Court finds that the provisions of the **POPA** do apply to the present matter, and that therefore it was mandatory for the Plaintiff to serve one month's previous written Notice of the action, suit, proceeding and of the subject matter of the complaint, on the Defendant prior to the lodging of the present case, pursuant to **s. 4(2)** of the **POPA**.

It is common ground between the Parties that no Notice was served on the Defendant in the present matter.

In view of all the above, the Court finds that by failing to serve such Notice on the Defendant as provided by Law, the Plaintiff has failed to comply with the provisions of **s. 4(2)** of **POPA**, and pursuant to **s. 4(2)(c)** of **POPA**, the Defendant shall, in the circumstances, be entitled to Judgment with Costs.

In light of the Court's above Finding, it is not necessary for the Court to consider the second limb of the Plea In Limine Litis.

Conclusion

In light of all the above, the Court upholds the first limb of the Plea In Limine Litis, and the present matter is therefore dismissed.

No Order as to Costs.

CN62/17 - Industrial Court (Civil Side)

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

[Industrial Court]

[Date: 25 May 2022]