Uykutalp v Holiday And Leisure Resorts Ltd

2023 IND 20

CN362/19

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Mr. Hakan Uykutalp

Plaintiff

v/s

Holiday And Leisure Resorts Ltd

Defendant

RULING (NO. 1) (PLEA IN LIMINE LITIS – JURISDICTION)

By way of Plaint dated 20-06-19, the Plaintiff is claiming from the Defendant Company, for his unfair and unjustified dismissal:

1) the total sum of 21 733/- € representing 06 months' Salary for the period April to September 2019, End Of Year Bonus Pro Rata, and 01 month paid leave together with Interests as from the date of termination, i.e. 01-04-19;
2) 1250/- € representing the estimate cost of a return air ticket from Turkey to Mauritius in order for him to attend the Trial in the present matter; and
3) Costs for his stay in Mauritius, i.e. accommodation, food and ancillary expenses, for the purpose of Trial.

The Plaintiff is also praying for such other order as the Court may deem fit and proper in the circumstances.

The Defendant Company has denied the said Claims in its Amended Plea dated 21-04-21, praying for the present matter to be dismissed with Costs, and has raised a *Plea In Limine Litis* which reads as follows:

> The Defendant avers that the Industrial Court has no jurisdiction to hear the Plaintiff's claim, as it does not arise out of any of the enactments set out in the First Schedule of the Industrial Court Act or of any regulations made under those enactments or within such other jurisdiction as may be conferred upon the Industrial Court by any other enactment.

Each Party was assisted by Learned Counsel.

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

Case for the Defendant Company

In essence, Learned Counsel for the Defendant Company submitted that the Plaintiff was not entitled to claim remuneration under **s. 25 of the Employment Rights Act (hereinafter referred to as ERA)**, as he did not fall within the definition of worker for the purposes of the **ERA**, it being averred at paragraph 11.(ii) of the Plaint that his monthly salary was 2600/- €, that is well in excess of Rs360 000/-, which is the amount prescribed by **s. 2 of the ERA** for an employee to fall within the definition of worker.

Learned Counsel for the Defendant Company therefore moved for the Plaint to be set aside with Costs.

Case for the Plaintiff

Learned Counsel for the Plaintiff submitted that the *Plea In Limine Litis* was premature, as evidence would have to be adduced for the Court to determine whether there was any merit in the Plea raised, relying on the Authorities of **Rama v Vacoas Transport Co. Ltd** [1958 MR 184], **Blencowe v ACMS Ltd** [2021 SCJ 26] and **Association Syndicale Du Lotissement Anahita World Class Sanctuary v Murray & Anor** [2021 SCJ 57].

In Reply

In Reply, Learned Counsel for the Defendant Company submitted that the *Plea In Limine Litis* had been taken on the basis that the averments in the Plaint were true, in light of the principles set out in **Rama (supra)** such that there was no need for evidence to be adduced, and that the "issue of jurisdiction can be adjudicated upon by having a look at the prayers which forms (sic) the cause of action".

Analysis

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

Applicable Law

Learned Counsel for the Plaintiff submitted that the applicable Law was the **ERA**, and Learned Counsel for the Plaintiff did not dispute this.

Given that the Plaintiff's employment was terminated on 01-04-19 (paragraph 7.2 of the Plaint), the applicable Law at the relevant time was the **ERA**.

Is the *Plea In Limine Litis* Premature?

The first issue to be determined is whether the *Plea In Limine Litis* raised by the Defendant Company is premature.

As remarked by the Appellate Court in **Avigo Capital Management Pvt Ltd v Avigo Venture Investments Limited [2019 SCJ 158]**, "[p]oints 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." (emphasis added)

Applying the abovementioned principles to the present matter, the Court is of the considered view that determining the question of Jurisdiction requires reference to the Pleadings only, and not evidence.

In the circumstances, the Court finds that the Plea In Limine Litis cannot be said to be premature.

Does the Industrial Court have Jurisdiction in the present matter?

As per the *Plea In Limine Litis* raised by the Defendant Company, as set out above, it was the contention of the Defendant Company that the Industrial Court has no Jurisdiction in the present matter, given the Plaintiff's claims do not arise from any of the enactments set out in the First Schedule to the **Industrial Court Act**.

As per paragraph 11 of the Plaint, the Plaintiff is claiming from the Defendant Company:

1) Six months' salary for the period of April to September 2019;
2) End of Year Bonus Pro Rata; and
3) One month paid leave.

Six months' salary for the period of April to September 2019

It is trite Law that the Parties are bound by their Pleadings and given the wording of the Plaint at paragraph 11.(i), it is clear that the Plaintiff is claiming his salary, i.e. his outstanding salary, for the period April to September 2019.

Given the Plaintiff averred that his employment was terminated on 01-04-19 (paragraph 7 of the Plaint) and that his Contract of Employment was meant to end on 19-09-19 (paragraph 1 of the Plaint), it is evident that the period for which the Plaintiff is claiming outstanding salary in fact corresponds to the period that was remaining for his contract to come to an end, but during which he was no longer in employment with the Defendant Company.

Pursuant to **s. 25 of the ERA**, "[e]very employer shall pay any remuneration due to a worker on the termination of the worker's agreement".

The **ERA** therefore places a statutory obligation on an employer to pay any remuneration due to a worker, when the worker's agreement is terminated.

S. 25 of the ERA specifically refers to a worker, which is defined in **s. 2** of the **ERA** as follows:

> "worker", subject to s. 33 or 40 [1] –
>
> […]
>
> (c) does not include –
>
> […]
>
> (ii) except in relation to sections 4, 20, 30, 31 and Parts VIII, VIIIA, IX, X and XI, a person whose basic wage or salary is at a rate in excess of 360,000 rupees per annum.

Learned Counsel for the Plaintiff submitted that the *Plea In Limine Litis* was argued on the basis that the averments in the Plaint were true, in light of the principles set out in **Rama (supra)**.

And as per paragraph 11. (i) of the Plaint, the Plaintiff's monthly salary was 4000/- €.

As per the Consolidated Indicative Exchange Rates of the Mauritian Rupee against foreign currencies computed by the Bank of Mauritius, which aim to provide an indication of average retail rates prevailing in the market at the time of publication, on 01-04-19 (i.e. the date of termination of the Plaintiff's employment), 1/- € was being sold at Rs39.6965/- (which the Court is rounding up to 02 decimal places to Rs39.70/-).

And from a simple mathematical calculation, it is clear that the Plaintiff was earning as monthly salary well in excess of the prescribed amount of Rs360 000/- per annum, which is Rs30 000/- per month:

> €4000/- x Rs39.70/- = Rs158 800/-

The Court has noted that as per paragraph 11. (i) of the Plaint, the Plaintiff has calculated the six months' salary as follows:

> "€4000 x 6= 16000"

but 4000 x 6 is in fact equal to 24 000/-.

[1] *Ex facie* the Plaint, the Court is of the considered view that **ss. 33** and **40 of the ERA**, which relate to the Entitlement of Workers in the Sugar Industry and the Workfare Programme respectively, do not apply to the Plaintiff in the present matter.

The Court also notes that the Plaintiff calculated the six months' salary on the basis of 4000/- € per month, but calculated the End of Year Bonus Pro Rata on the basis of 2600/- € as monthly salary.

Be that as it may, even if the Plaintiff's monthly salary was 2600/- €, he would still be earning well in excess of the prescribed amount:

2600/- € x Rs39.70/- [2]= Rs103 220/-.

True it is that paragraph 11.(i) of the Plaint mentions 4000/- € as the Plaintiff's monthly salary, and 2600/- € was used in paragraph 11.(ii) to calculate the End of Year Bonus Pro Rata, without specifying whether the said figures were the Plaintiff's basic monthly salary or wage, but the basic principle remains that the Parties are bound by their Pleadings, and hence the said figures are to be taken as being the Plaintiff's basic monthly salary given the very calculations set out in paragraph 11.(i) and (ii) of the Paint.

No explanation has been afforded for the said variance in the figures mentioned in paragraph 11. (i) and (ii) of the Plaint on behalf of the Plaintiff.

In light of all the above, whether the Plaintiff was earning 4000/- € or 2600/- € as basic monthly salary, the fact remains that the Plaintiff does not fall within the definition of "Worker" as per **s. 2 of the ERA** and hence cannot *a priori* base his Claim on **s. 25 of the ERA**.

That being said, the sections and Parts of the **ERA** which apply to a worker, regardless of his/her basic wage or salary, are exhaustively set out in the definition of "Worker" in **s. 2 of the ERA**, and they are:

1) **S. 4**;
2) **S. 20**;
3) **S. 30**;
4) **S. 31**;
5) **Part VIII**;
6) **Part VIIIA**;
7) **Part IX**;

[2] Consolidated Indicative Exchange Rates as highlighted above

8) **Part X**; and
9) **Part XI**.

No mention of **s. 25** or of **Part V** which contains **s. 25**, of the **ERA** is made in the said list of exhaustive exceptions.

Not only has the Legislator chosen to set out the Parts of the **ERA** which apply to workers regardless of their basic wage or salary, but has also chosen to set out the sections of the **ERA** which likewise apply to workers regardless of their basic wage or salary.

This clearly illustrates the intention of the Legislator, and it is trite Law that the "legislator does not legislate in vain" (**Curpen v The State [2008 SCJ 305]**).

The Court is of the considered view that had the Legislator intended for **s. 25 of the ERA** to apply to workers, regardless of their basic wage or salary, the said section and /or the said **Part V** which contains **s. 25** would have been included in the said exhaustive list set out in **s. 2 of the ERA** as regards the definition of "Worker".

The Court also bears in mind the principles set out in **Maxo Products v P.S Ministry Of Labour and Industrial Relations [1991 SCJ 225]**:

> I must unfortunately conclude that Mr. Parmessur who earned more than what now appears to be the rather ridiculous sum of Rs 30,000 per year is not a worker to whom the Labour Act 1975 applies. The Magistrate of the Industrial Court had therefore no jurisdiction to entertain his claim.

The Court is alive to the fact that the abovementioned Authority specifically related to the **Labour Act 1975**, which now stands repealed. But the Court is of the considered view that given the underlying philosophy and rationale behind our Labour Laws, coupled with the very similar wording of the definition of "worker" in the **Labour Act 1975** and the **ERA**, in particular as regards what is not included in the definition of "worker" and the exhaustive list of Parts and sections of the said respective Acts which apply to workers regardless of their basic wage or salary, that the principles enunciated as to the Court's jurisdiction in **Maxo (supra)** apply *mutatis mutandis* to the present matter.

In light of all the above, the Court is of the considered view that the Court's Jurisdiction is ousted, in relation to Claims pursuant to **s. 25 of the ERA**, once the employee's basic wage or salary exceeds the prescribed amount of Rs360 000/- per annum, and hence the Court has no Jurisdiction in the present matter, given the Plaintiff was earning in excess of the prescribed amount at the relevant time as highlighted above and his Claim therefore does not arise out of one of the enactments listed in the First Schedule to the **Industrial Court Act**.

End of Year Bonus Pro Rata

And as per paragraph 11. (ii) of the Plaint, the Plaintiff is claiming an End of Year Bonus Pro Rata on the basis of 2600/- € per month.

The End of Year Bonus is specifically provided for by **s. 31A(1) of the ERA**, which reads as follows:

> Where a worker remains in continuous employment with the same employer in a year, the worker shall be entitled at the end that year to a bonus equivalent to one-twelfth of his earnings for that year.

Whilst it is true that the question of continuous employment is one of fact, which can only be determined once evidence has been adduced, the question of whether the Plaintiff falls within the definition of worker for the purposes of **s. 31A(1) of the ERA** can be determined by reliance on the Pleadings only.

As highlighted above, the Legislator has exhaustively set out in the definition of "Worker" in **s. 2 of the ERA** the specific sections and Parts which apply to workers irrespective of their basic wage or salary.

And neither is **s. 31A of the ERA** nor is **Part VI of the ERA under which s. 31A falls,** specifically mentioned in the said exhaustive list.

Applying the same reasoning as above in relation to **s. 25 of the ERA**, had the Legislator intended for **s. 31A of the ERA** to apply to workers, regardless of their basic wage or salary, the said section and/or the said **Part VI** containing **s. 31A** would have been included in the said exhaustive list set out in **s. 2 of the ERA** as regards the definition of "Worker".

In light of all the above, given the Plaintiff was earning in excess of the prescribed amount, as highlighted above, the Plaintiff does not fall within the definition of "worker" for the purposes of **s.**

2 of the ERA and hence cannot base his claim on **s. 31A of the ERA**, given the Industrial Court's jurisdiction is ousted in relation to said section once the worker's basic wage or salary is in excess of the prescribed amount.

One month paid leave

It is not disputed that the **ERA** is the applicable Law in the present matter.

Given there is no specific provision in the **ERA** in relation to one month paid leave, this is Claim does not arise out of any of the enactments listed in the First Schedule to the **Industrial Court Act**, and hence the Industrial Court has no jurisdiction in relation to the said Claim.

Conclusion

In light of all the evidence on Record, all the circumstances of the present matter, all the factors highlighted above, and for all the reasons given above, the Court upholds the *Plea In Limine Litis* raised by the Defendant Company, and the present Claim is therefore set aside.

With Costs.

[Delivered by: D. Gayan, Ag. President]
[Intermediate Court (Financial Crimes Division)]
[Date: 31 March 2023]