

M.L.M.M. PIGEOT v MEDINE LIMITED

2025 IND 38

IN THE INDUSTRIAL COURT (CIVIL SIDE)

CN 727/17

In the matter of:

Moy-Lan Maritza Maryvonne PIGEOT

Plaintiff

V

MEDINE LIMITED

Defendant

JUDGMENT

Claim Lodged

1. On the 29th September 2017 the plaintiff Mrs Moy-Lan Maritza Maryvonne Pigeot lodged a plaint against Medine Ltd via the Ministry of Labour, Industrial Relations, Employment and Training before this Court. On the 4th April 2019 the plaintiff instructed her own legal representatives (Attorney and Counsel) and subsequent to an amendment to the plaint made on that day and on the 9th May 2019, the Ministry of Labour, Industrial Relations, Employment and Training was no longer a party to the case. The plaintiff's case which is for constructive dismissal is set out in a second amended plaint dated 29th October 2020 reads as follows:

Plaintiff's Case

2. The plaintiff contends in her plaint that:

- (a) *She was in the continuous employment of Defendant as secretary since 24 April 2006;*
 - (b) *She was employed on a 5-day week basis;*

- (c) She was promoted to the post of Sales & Leasing Executive on 11/12/14 on a probation period of 3 months with a salary of Rs 26128 plus a company vehicle, a fleetman card and a monthly fuel allowance of up to Rs 10000 and commission on sales;
- (d) at the end of her Probation period no assessment was carried out to evaluate her performance;
- (e) it was only on 5/3/16 that an appraisal exercise was made whereby she was rated at 3 out of an average of 5 marks and was to improve in her performance;
- (f) she worked without any adverse report for period March to June 2015;
- (g) on 1st July she was informed that her probation period has been extended for a period of 3 months;
- (h) following that decision she started to receive emails from Defendant reproaching her for alleged discrepancies on her performance which she considers to be unjustified in as much as
 - (i) procedures themselves were not clearly established;
 - (ii) Several flaws she was being tagged for were consequential to IT technical problems in relation to her PC (personal computer) which were pointed out by the IT department;
- (i) on 30 October 2015 she was informed that her progress in the role of Sales and Leasing Executive has not been satisfactory and as such she was not confirmed in that position;
- (j) she was consequently, informed that her job duties and responsibilities have been reviewed and amended as 'Land Lease Administrative Officer' as from November 2015 whereby her job related company vehicle and the company mobile phone were removed from her and she was earning only her basic salary of Rs 27628 (i.e Rs 27,128 + Additional Remuneration 2016);
- (k) she accepted the post of Land Lease Administrative Officer' as she had no other alternative;
- (l) in January 2016, she requested for a meeting with Defendant to clarify certain issues pertaining to her alleged negative performance as Sales & Leasing Executive, being given that she had observed that the sales department was henceforth being supported by the administrative team following her departure from that post whereas she was in post, she was performing alone and such work took 50% of her working time;
- (m) she was granted a meeting only on 29th February 2016 to discuss her situation but Defendant finally asked her "as to what was to be done next and as to whether she still wanted to work for the Company" without probing into the matter to seek an appropriate solution and maintained its stand regarding her position as Land Lease Administrative Officer';

- (n) *she made a representation at the labour office on 9 May 2016 to seek redress on her situation as she believed she had been demoted and in the course of a meeting held on 26 May 2016 Defendant once more maintained its stand;*
- (o) *she reported a case of constructive dismissal at the labour office on 30.05.16 considering Defendant to have put an end to her contract of employment by bringing about a unilateral change in her condition of work;*

[sic]

3. The amount claimed by the plaintiff in her plaint is Rs 1,448,508.44 and interest rate of 12 % per annum on the severance allowance payable from the date of termination of employment to the date of payment and such amount by way of compensation for wages lost and expenses incurred in attending court. With costs and interests at the legal rate from the date of termination until the date of final payment.

Defendant's Case

4. The defendant's case is set out in the amended plea (hereinafter referred to as the plea) dated 22nd February 2022. At paragraph 1 of the plea the defendant denies that the plaintiff was employed since 24th April 2006 and avers that plaintiff was employed as from 1st December 2007. At paragraph 3 of the plea, the defendant denies that a performance appraisal was carried out on 5th March 2015 and signed on 6th March 2015. In fact, the defendant asserts that in July 2015 the probation period was extended for a further period of 3 months as the plaintiff had not delivered complete satisfaction in the overall performance of her duties. Also the defendant explains in the plea that following a probationary review carried out on the 16th October 2015, it was ascertained that the performance of the plaintiff as sales and leasing executive was not satisfactory and plaintiff was therefore not confirmed to that post. The defendant contends that the plaintiff was therefore offered a "*new job*" responsibility as land lease administrative officer, effective as from the 1st November 2015 which was expected to better "*match her profile*." The defendant sets out in the plea that "*The Plaintiff accepted the new position offered to her.*" At paragraph 4 of the plea, the defendant states that a further appraisal was carried out on the 3rd of March 2016 and adds that the defendant highlights the fact the appraisal exercise referred to therein relate to the new position held by the plaintiff as land lease administrative officer since 1st November 2015 and

maintains that the plaintiff's performance was rated below the standard level and the plaintiff herself acknowledged that her performance needed to be improved.

5. At paragraphs 5, 6, 7 of the plea the defendant affirm that on a few occasions the plaintiff was reminded of the need to improve and reproached for not following established company procedures. The defendant points out that procedures were clearly established and the poor performance reproached to the plaintiff cannot be related to office equipment. At paragraph 8 of the plea the defendant sets out that following an unsatisfactory probation, the plaintiff was offered the post of land lease and administrative officer which she accepted. The remuneration of plaintiff did not change. However, the car and the fleetman card, which were only provided to her in order to allow her to perform the post of sales and leasing executive were removed as she had not been confirmed to that post due to her poor performance. At paragraph 9 in plea it is reiterated that the plaintiff accepted her new position positively without complaint in November 2015. The defendant sums up its defence at paragraph 10 (a),(b) and paragraphs 11, 12 in these terms: *Plaintiff performed her new duties since end of October 2015 without raising any issues therewith or in relation to her job title or professional responsibilities and Plaintiff sent a mail to the Group Human Resources Manager on 29th January 2016 and asked him to organize a meeting when she will be back from her holidays. The meeting was then organized upon Plaintiff's return at the office on 29th February 2016.* The defendant concludes in the plea denies having demoted the plaintiff and having unilaterally changed the plaintiff's conditions of work.

The Trial: Evidence Adduced

6. During the trial the plaintiff testified under oath and in examination in chief she gave a chronological history of her career within the defendant company as Secretary/Telephonist, Sales Coordination Officer, Sales and Leasing Executive and Lease Administrative Officer. Plaintiff produced the following documents with regard to the posts she held:-
 - I. Letter of offer of employment and acceptance as Secretary/Telephonist on a purely temporary basis dated 11th April 2006 marked as **DOC P1**.
 - II. Letter of offer of employment and acceptance as Secretary/Telephonist on a purely temporary basis dated 30th November 2006 marked as **DOC P2**.

- III. Letter of offer of employment and acceptance as Secretary/Telephonist on a purely temporary basis dated 11th May 2006 marked as **DOC P3**.
- IV. Letter of employment as Sales Coordination Officer dated 4th December 2007 marked as **DOC P4**.
- V. Letter of appointment to the position of Sales & Leasing Executive dated 11th December 2014 with effect as from 1st December 2014 marked as **DOC P5**.
- VI. Letter of December 2014 regarding Commission Scheme marked as **DOC P6**.
- VII. Performance Appraisal-Form 2 of the plaintiff for financial year 2014-2015 marked as **DOC P7**.
- VIII. Email dated 1/7/2015 from Mr Ruvani Ramassawmy who is the Sales and Leasing Manager addressed to plaintiff regarding extension of probation period of the plaintiff for three months due to unsatisfactory progress in the role of Sales & Leasing Executive marked as **DOC P8**.
- IX. Emails exchanged on the 13/7/15 and 14/7/15 between Mr Ruvani Ramassawmy, Information Studentlife and the plaintiff regarding issues and “*2 erreurs*” made by the plaintiff in relation to student life: student housing. The emails are marked as **DOC P9**.
- X. Emails exchanged on the 30/7/25 and 31/7/25 between Mr Ruvanni Ramassawmy and plaintiff regarding follow up of MOHQL file. Plaintiff’s attention is drawn to “*criteres de performance*” namely “*Quality of work-1. Follow up customer requests and reservations.*” The emails are marked as **DOC P10**.
- XI. Email dated 31/7/2015 at 13:49 between Mr Ruvanni Ramassawmy and the plaintiff for failing to copy “Medine Property Sales” in her correspondences. Plaintiff’s attention is drawn to “*criteres de performance*” namely “*E.communication skills-1.Send summary to customer by email within 24 hours after each conversation. Systematically copy the propertysales@medine.com to enable proper tracking.*” Email is marked as **DOC P11**.
- XII. Email dated 31/7/2015 at 13:38 between Mr Ruvanni Ramassawmy and plaintiff “*Subject: Tracker Suivi Clients pas a jour*” whereby plaintiff is reminded that “*il t'a ete signifiee tu n'avais pas mis a jour le tracker : Suivi Client-Morcellement residential.*” In that email plaintiff is reminded of “*criteres de performance*” namely “*D.Quality of work-2.Constantly update tracking documents (ex: sales tracker, customer profile, cancellation update...)*” This email is marked as **DOC P12**.

- XIII. Emails dated 3/08/2015; 31/7/2015; 29/7/2015; 7/8/2015; exchanged between Mr Ruvanni Ramassawmy; Hidaya Aminu; Information Student Life (Alix Hernvann) and plaintiff regarding online application of Hidaya Aminu which has not been properly replied by the plaintiff. Plaintiff is reminded of "*criteres de performances : D.Quality of work- 1. Follow up customer requests and reservations.*" The emails are marked as **DOC P13**.
- XIV. Emails of 24/8/2015; 21/8/2015; 20/8/2015; 13/2/2015; 10/10/2014; 9/10/2014 of Mr Ruvanni Ramassawmy, Anshi Saminaden, Rudi Goorwapa and plaintiff regarding lease of land at 7 Cascades. The plaintiff is reproached of not having followed the instructions given to "***Reject counter proposal and maintain Rs 2.5m/A subject to Board Approval.*** To get letter prepared by Anshi and vetted by Notary." Plaintiff is reminded of "*criteres de performance sous la section: - E.Communication skills : 2. Listen and convey clearly and in concise way, with respect the relevant information, reliable and complete at any time.*" The emails are marked as **DOC P14.**
- XV. Email from Mr Ruvanni Ramassawmy dated 25/9/2015 at 18:25 whereby plaintiff is reproached the following:
- *N'avoir pas le suivi requis sur le projet Student Life (relance des etudiants pour l'offre de 20% n'a pas été faite, certains etudiants n'ont pas encore été contacté & aucune remarque n'apparaît)*'
 - *Concernant le projet Billboard aucun suivis recent n'apparaissaient sur le client Permoglaze*
 - *Concernant le projet CFL, le client Borwood n'y apparait pas*
 - *Concernant le projet de CSM, aucun suivi complet voir même aucun contact n'a été fait sur les 14 leads que tu as vu & inseree dans le tracker*
 - *Concernant la plainte de Mr Yetty suite à son achat à Chaperons, qui ne fait figure pas dans notre agenda de notre reunion.*
 - *Concernant le projet de Sunset View, aucun «hyperlinks» n'ont été cree concernant les 2 leads que tu avais sous ta responsabilite.*

Merci de noter que cela fait partie de tes criteres de performance :

- *D.Quality of works : 2. Constantly update tracking documents (ex: sales tracker...)*
- *C. Planning and organisation:*
 1. *Prioritize work according to the information/instruction given by the manager.*

2. File (hard & soft docs) in such way to have quickly access to info

- XVI. Email from Mr Ruvanni Ramassawmy dated 25th September 2015 addressed to the plaintiff whereby she is reminded not make mistakes regarding the name of a client. The mistaken mails addressed to one Mr Kureeman who has been named as "Mr Boodhu" is referred to as well. The emails are marked as **DOC P16**.
- XVII. Email from Mr Ruvanni Ramassawmy addressed to the plaintiff regarding "mis a jour" of the trackers "quotidiennement." Email marked as **DOC P17**.
- XVIII. Email from Mr Ruvanni Ramassawmy addressed to the plaintiff regarding a mail sent to Mr Peeroo of the CWA whereby the said mail refers to a "draft du lease agreement. Plaintiff is reprimanded of having sent this draft "*avec les commentaires de notre legal advisor qui nous concerne en interne.*" There are also exchange of mails regarding that issue. The emails are marked as **DOCP18**.
- XIX. Letter dated 30th October 2015 with an attached job contract for Land Lease and Administrative Officer from Medine Property to the plaintiff signed by Mr Ruvanni Ramassawmy Sales and Leasing Manager and Laurent Gordon Gentil Group HR Manager whereby the plaintiff is informed that:

Further to your probationary review done on the 16th October 2015, we confirm that your progress in the role of Sales & Leasing Executive has not been satisfactory. Consequently, we regret to inform you that you are therefore not confirmed in the position.

With regards to the above, your job duties and responsibilities have been reviewed and amended as 'Land Lease Administrative Officer', effective as from 01st November 2015. As discussed, we believe that this new job responsibility will better match with your profile.

In that letter the plaintiff is offered a new job profile and the benefits like company vehicle and mobile phone are withdrawn by the company. This letter and its attachment are marked as **DOC P19**.

- XX. Email from plaintiff to Laurent Gordon Gentil dated 29th January 2016 at 17:15 whereby plaintiff informs that she is going on vacations abroad and that she is asking for a meeting in presence of the "*in-house legal to erase any doubt from my mind regarding the legality of my demotion.*" Email is marked as **DOC P20**.
- XXI. Email from Laurent Gordon Gentil to plaintiff dated 26th February 2016 at 16:41 informing her that a meeting had been scheduled marked as **DOC P21**.
- XXII. Emoluments for last 12 months June 2015 to May 2016 marked as **DOC P22**.
- XXIII. Copies of Salary slips of plaintiff from 1st June 2015 to 31st May 2016 marked collectively as **DOC P23**.
- XXIV. Land Lease Administrative Officer contract signed on the 9th November 2015 between Mr Ruvanni Ramassawmy Sales and Leasing Manager and the plaintiff marked as **DOC P22**.
- XXV. Letter dated 9th May 2016 to the Permanent Secretary Ministry of Labour from the plaintiff to the attention of Mr Damree to organise a meeting in relation to a "unilateral change" in her contract of work. Letter marked as **DOC P23**.

7. The gist of the plaintiff's case is that what has happened to her is unfair and she has been constructively dismissed that is her demotion in fact was a disguised form of dismissal. Plaintiff explained that she stayed on and continued working despite the demotion whereby she accepted the offer of the post Lease Administrative Officer because her progress in the role of Sales and Leasing Executive has not been satisfactory because:

A. *When in 2006, I joined Medine, my first manager told me you know here were are a family and I really feel like it was a family, until those things happen to me. When you are in a family, you only want to believe that these kind of things cannot be happening to you after ten years. You want to believe that they will listen to you. They will do something. And I was still keeping faith, hope that things would not be turning up like that at the end. When my colleagues came to work like Rubani Ramasawmy, I was the one to do his induction on the field.*

8. She adds that :

A: *J'ai accepte parceque pour moi je pensais avoir- j'avais la foi que les choses auraient pu s'améliorer.*

9. In cross-examination, plaintiff was confronted with the fact that she not only she signed a new job contract when she was demoted but that she kept on working. Plaintiff was also asked whether she openly and directly complained about her demotion and that never addressed her concerns to someone “even higher up in the hierarchy in Medine.” Plaintiff agreed with counsel for the defendant:

Q: So when Mr Laurent Gordon Gentil told you apparently, allegedly by you, as alleged by you, that he had no time for you, you could have addressed your concerns with someone, even higher up in the hierarchy at Medine?

A. I could have.

10. Furthermore plaintiff agreed that she had decided to go abroad instead of attending the meeting with her employer which therefore never took place and that if she wanted that meeting could have taken place immediately.
11. In a nutshell in cross-examination, plaintiff agreed that she was in fact trying to find “a terrain d’entente.” Which she explained in re-examination as being:

A. That they review their decision in putting me down, because I love my job and I love what I was doing. I really love what I was doing at the time. I was doing this since nearly nine years already. So, removing the Sales of Morcellement from me was like taking one of my kids away, and I just couldn’t bear with that decision. Even if I took time to react it was a great shock for me. Humanly I had to assimilate all this.

12. The plaintiff’s case was thereafter closed and the defendant did not adduce evidence and closed [its] case. Counsel for the plaintiff and the defendant made their respective submissions.

The Applicable Principles and Counsel Submissions

13. In a claim for constructive dismissal the current position in Mauritius have been summed up in the following judgments.
14. In effect, it is trite law that the burden lies on the plaintiff to establish how he had been constructively dismissed and as pointed out in the case of **Raman Ismael v. UBS Ltd [1986 MR 182]**

"constructive dismissal is inherently different from dismissal in the sense that it is the employee who necessarily takes the initiative in considering the contract as having been repudiated.

15. In **Bastien-Sylva C v Sanlam General Insurance Co Ltd 2020 SCJ 259** the Supreme reaffirmed the test regarding constructive dismissal which was applied by the Judicial Committee of the Privy Council in **Grewals (Mauritius) Ltd v Koo Seen Lin [2016 UKPC 11];**

Whether the appellant was constructively dismissed from employment when he tendered his resignation on 12 November 2008. The relevant test to address these issues was correctly applied by the learned Magistrate as referred to in Grewals (Mauritius) Ltd v Koo Seen Lin [2016 UKPC 11]; "when constructive dismissal is in question, the acid test is not whether the employer intended to dismiss; it is whether he has by his conduct objectively judged, repudiated the contract. If he has, the employee is entitled, by accepting the repudiation to treat the conduct as constructive dismissal.

16. In **J.Joseph v Rey & Lenferna Ltd 2008 SCJ 342** The Supreme Court held that the following factors must be taken into consideration regarding cases of constructive dismissal:

In a case of constructive dismissal, the employee's response to the employer's conduct is an important factor. The employee must be careful that his response does not imply a willingness to accept the new conditions. He must not stay on in circumstances which imply that he does not regard his employer's conduct as entitling him to terminate his contract of employment. Our case law has laid down that the test for constructive dismissal is a contractual test. A constructive dismissal by an employer occurs where an employee is entitled to put an end to

his contract of employment by reason of his employer's conduct. Although the employee terminates his employment, it is the employer's conduct which constitutes the breach of contract. It is therefore imperative that the employee clearly indicates, by word or conduct, that he is treating the contract as having been terminated by his employer and if he fails to do so, he will not be entitled to claim that he has been constructively dismissed. This principle was clearly explained in Periag v International Beverages Ltd (supra) in the following words:

"First, since under the general principles of our law of contract a worker is entitled to treat his employment agreement as at an end in circumstances where his employer commits a breach of such a kind as to entitle the worker to do so, the worker must elect whether to treat his employment agreement as at an end and terminate it or to overlook the breach and stay in his employment under changed terms. He may protest or take some little time or do both before making his election and taking a final decision. He must, however, make his election. Otherwise his employment links will not be severed and he will be regarded as being in 'continuous employment'. In this respect, both English and Mauritian case law have reached the same solutions".

The following observations of Lord Denning in Western Escavations (Ece) Ltd. v Sharp [1978 1 ALL E.R. 713], referred to in Periag (supra), are also pertinent: "The employee must make up his mind soon after the conduct of which he complains. If he continues for any length of time without leaving, he will be regarded as having elected to affirm the contract and will lose the right to treat himself as discharged".

In the present case, the appellant's lack of response to the new terms clearly showed that he had initially accepted the new conditions and remained in employment before changing his mind much later. The learned Magistrate rightly took the view that, being given the position he held within the respondent's organisation, it could not be said that he was put before a «fait accompli» and was unable to respond. The above conclusion is further buttressed by the fact that the appellant launched a rival company very shortly after he had put an end to his employment.

17. In **Saint Aubin Limitee v Alain Jean Francois Doger De Speville [2011] UKPC 42** the Judicial Committee of the Privy Council made it clear that:

The principles governing constructive dismissal and unjustified termination are not in dispute. A constructive dismissal occurs if an employer imposes on an employee unilaterally, that is without the employee's consent, a substantial modification of the original contract conditions:

Adamas Limited v Cheung [2011] UKPC 32. The employee is entitled, though not bound, to treat such a change so imposed as a constructive dismissal.

18. These judgments are in fact consonant with the defendant's legal position upon which the defendant is relying upon to countervail the arguments that the plaintiff has been constructively dismissed.
19. Now in the present matter, counsel for the plaintiff's astutely submitted that this Court should consider the plaintiff's case from the following angle instead namely that "*The plaintiff's case is what is often described as the straw of it, the last straw that breaks the camel's back, la goute d'eau qui deborde le vase.*"
20. On this aspect therefore this Court has taken into account "the last straw doctrine" which has been outlined in **Harvey on Industrial Relations and Employment Law > Division DI Unfair Dismissal > 3. Termination by the Employee: Constructive Dismissal > C. Breach of contract by the employer:**

[480]

Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship.

[481]

A number of early cases on constructive dismissal illustrate this, in particular Garner v Grange Furnishing Ltd [1977] IRLR 206; Woods v WM Car Services (Peterborough) Ltd [1981] IRLR 347, [1981] ICR 666 ↗; and Lewis v Motorworld Garages Ltd [1985] IRLR 465, [1986] ICR 157 ↗, CA.

[481.01]

In Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493, [2005] IRLR 35 the Court of Appeal (having cited with approval para [480] above) held that where the alleged breach of the implied term of trust and confidence constituted a series of acts the essential ingredient of the final act was that it was an act in a series the cumulative effect of which was to amount to the breach. It followed

that although the final act may not be blameworthy or unreasonable it had to contribute something to the breach even if relatively insignificant. As a result, if the final act did not contribute or add anything to the earlier series of acts it was not necessary to examine the earlier history; this can be seen in the result on the facts in the subsequent Court of Appeal decision in Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978, [2018] IRLR 833 where the claimant relied on her being disciplined as the last straw to various earlier alleged instances of employer misconduct but it was held that on the facts the employer had acted entirely properly in activating the disciplinary procedure and so that could not constitute a last straw at all.

[481.02]

In spite of that decision against the claimant on the evidence, Kaur contains an important discussion of the whole last straw concept. Much of this is concerned with its interaction with another general issue, namely where there has arguably been affirmation of earlier breaches; this is considered specifically at para [541] below. However, for present purposes the importance of the case lies in Underhill LJ's clear acceptance of Omilaju as the leading case on last straw arguments. In particular, he set out the following passages from the judgment of Dyson LJ which he said sum it all up and should require no further elucidation:

"14 The following basic propositions of law can be derived from the authorities:

1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27.

2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example, Malik v Bank of Credit and Commerce International SA [1997] IRLR 462, 464 (Lord Nicholls) and 468 (Lord Steyn). I shall refer to this as "the implied term of trust and confidence".

3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] IRLR 347, 350. The very essence of the breach of the implied term is that it is "calculated or likely to destroy or seriously damage the relationship" (emphasis added).

4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at p.464, the conduct relied on as constituting the breach must "impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer" (emphasis added).

5. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put at para. [480] in Harvey on Industrial Relations and Employment Law:

"Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as

a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship."

15. *The last straw principle has been explained in a number of cases, perhaps most clearly in Lewis v Motorworld Garages Ltd [1985] IRLR 465, [1986] ICR 157*  *. Neill LJ said (p 167C) that the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term of trust and confidence. Glidewell LJ said at p 169F:*

"(3) The breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In particular in such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term? ... This is the 'last straw' situation."

16. *Although the final straw may be relatively insignificant, it must not be utterly trivial: the principle that the law is not concerned with very small things (more elegantly expressed in the maxim "de minimis non curat lex") is of general application....*

19. *The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.*

20. *I see no need to characterise the final straw as "unreasonable" or "blameworthy" conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.*

21. *If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle.¹¹*

[481.03]

Finally, note one specific point, namely that care may be required when the last straw doctrine is raised in a case where the claimant has operated an internal grievance procedure before leaving. Use of such procedures is of course strongly supported by employment law as a matter of policy, but it must not be allowed to prejudice what may otherwise be a good case for constructive dismissal. The facts of Craig v Abellio Ltd [2022] EAT 43, [2022] IRLR 596 are illustrative of this point. The claimant had had a series of problems with his pay and hours, culminating in particular problems with his entitlement to sick pay while off ill. The company had failed to deal with his complaints. When he raised a formal grievance it was initially rejected. It was then upheld on appeal and it was determined that he was owed £6,000 in sick pay which was to be paid by a set date but this was not done. He left and claimed constructive dismissal, arguing that this failure to pay was the last straw in the whole history of problems. It might have been thought that this was a fairly clear case of leaving in the light of a repudiatory breach by the employer, but the ET rejected his claim on the basis that the eventually successful grievance had dealt with the matter and on the facts the failure to pay on time was merely an administrative error. There was thus no repudiatory conduct by the end and so no constructive dismissal. The EAT allowed the claimant's appeal and

remitted the case to a different ET. It held that the ET had not considered sufficiently either the above last straw cases or the claimant's reliance on the whole history of pay-related problems. This was not 'forgiven' by the eventual outcome of the grievance.

21. In a nutshell, the "last straw" doctrine in the context of constructive dismissal refers to a legal principle where an employee resigns in response to a series of employer actions- in isolation – but which, taken together, cumulatively amount to a fundamental breach of the contract of employment. The "last straw" is the final act by the employer that prompts the employee to resign.

Assessment of the evidence on record: Conclusion

22. During the trial, this Court had the opportunity to hear and go through the documentary evidence produced by the plaintiff in order to assess whether the plaintiff has been constructively dismissed. The crux of the plaintiff's testimony is that her career curve has started off well and that subsequently she had a downfall. This downfall which according to her version can be summarised as follows:

- a. There a series of incidents.
- b. There is a Cumulative Effect of these incidents.
- c. The Final Act (Last Straw): demotion to a lesser job.
- d. Termination of the employment contract by this unilateral decision of the employer.

23. This Court has taken into account the plaintiff's conduct regarding the series of incidents and the surroundings facts; the employment relationship. Outright, this Court observes that the plaintiff at all times acquiesced and consented to her employer's conduct. For example, whenever the plaintiff was reproached by mail by her superior to improve her performance or to address the lacunae in her performance, plaintiff almost at all times admitted her shortcomings and replied in her email that she would take corrective measures. This Court has gone through DOC P 7 up to DOC P17 through the "PERFORMANCE APPRAISAL-FORM 2" and the various emails between plaintiff and her superiors/colleagues, in none of these emails, did the plaintiff voice out her concern that these reproaches or corrective measures were

causing her any distress or was of such of nature that was a deterioration of her work conditions.

24. In connection to the final straw, namely her demotion to the post of 'land lease administrative officer', it is clear from **DOC P19** that the plaintiff accepted the new terms and condition of her employment on the 6th November 2015. Plaintiff even went on to sign that contract of employment without any remarks or protest. She admitted that she could have voiced her concern to Mr Gordon Gentil, she conceded that she could have, but she did not do so. In fact, plaintiff only voiced out her concerns in an email almost two months later on the 29th January 2016 at 17:15 hrs. From these facts, it is clear that not only the plaintiff voluntarily accepted the lesser job but she was never in a position of duress so that her consent had been vitiated. In fact, this Court is alive to the fact, that on the one hand acceptance as such does not mean that there is no constructive dismissal but on the other hand this Court cannot discard the fact that throughout her career with the defendant, the plaintiff walked through the journey without any protest and never complained that her back was being "curbed" by undue weight or pressure by the employer. As the plaintiff's puts it herself in her testimony she was trying to find a "*terrain d'entente*."
25. Accordingly, from the evidence on record, this Court finds that the plaintiff's case does not fall within ambit of the principles of constructive dismissal and this Court fully endorses the view of the Judicial Committee of the Privy Council's in **Saint Aubin Limitee v Alain Jean Francois Doger De Speville [2011] UKPC 42**:

The principles governing constructive dismissal and unjustified termination are not in dispute. A constructive dismissal occurs if an employer imposes on an employee unilaterally, that is without the employee's consent, a substantial modification of the original contract conditions: Adamas Limited v Cheung [2011] UKPC 32. The employee is entitled, though not bound, to treat such a change so imposed as a constructive dismissal.

26. In the present situation, there has been no unilateral changes in her work conditions and plaintiff unequivocally accepted the conditions. For these reasons, the plaint is accordingly dismissed.

A.Joypaul

Magistrate

Industrial Court