RODATI Enrico v/s VERANDA LEISURE & HOSPITALITY LTD

2020 IND 21

THE INDUSTRIAL COURT OF MAURITIUS

(CIVIL JURISDICTION)

C N 196/15

In the matter of:

RODATI Enrico

Plaintiff

V/S

VERANDA LEISURE AND HOSPITALITY LTD

Defendant

JUDGMENT

The present case is a claim by the plaintiff against the defendant as he considered that the termination of his employment on the ground of redundancy was unfair and unjustified. Hence his claim in the total sum of Rs 7,260,000.00 representing severance allowance at punitive rate and indemnity in lieu of notice. He is also claiming interest at the statutory rate of 12% on the amount of severance allowance as from the date of his dismissal until the date of final payment.

Plaintiff's case

Plaintiff deposed as per the averments in the proecipe dated 22 April 2015 containing not less than 37 paragraphs, relating plaintiff's history of employment and the circumstances in which his employment was terminated.

As per the averments in the proecipe and confirmed in Court by the plaintiff, his employment history was as follows:

-On 20 May 2007 he was first employed by Pristine Resorts Ltd (Indigo Hotels) as Executive Chef at Le Telfair Golf and Spa Resort as per letter of appointment dated 27 April 2007

(Doc.A). Plaintiff referred to clause 2 of the letter which describes his position as Executive Chef, Le Telfair Golf and Spa Resort. It came out that his report line is the General Manager of Le Telfair Golf and Spa Resort as per clause 4 of the said letter of appointment, which also mentions that plaintiff will have to work in cooperation with the Food and Beverage Manager. Clause 26 of the said letter was also referred to concerning the 'Alteration of conditions of employment' which states that "The company reserves the right to alter general conditions of employment as and when necessary and as appropriate after consultation and mutual agreement.

- In or about 2008/2009 when Le Telfair Hotel was taken over by Veranda Management plaintiff's contract of employment was renewed until end of May 2010 with the same conditions except for his housing allowance which was increased. He confirmed that in his letter of appointment dated 15 May 2009 it was stated that his employment commenced on 21 May 2007 (Doc.B). Clause 3 of the said contract was referred to regarding his reporting line namely that he will have to report to the General Manager but his "reporting line may be subject to change" as well as clause 17 which reads as follows: "As a result of business exigencies, your employment with the company may at any time be transferred to another subsidiary company with the same terms and conditions and continuity of service.' Plaintiff also referred to clause 16 in relation to the training and development program provided by the company as well as clause 24 which is in relation to grievance procedures and which provides that for any grievance relating to his employment plaintiff "should raise the matter within (your) management's structure" "If for any reason, it is inappropriate to take the matter to your immediate supervisor, you should contact your HR Department who will advise you of the appropriate course of action".

- On 21 April 2010 plaintiff and defendant entered into a long working agreement whereby plaintiff was put in charge of a culinary team for the third entity within the Domaine de Bel Ombre namely Villas Valriche Experience (lately rebranded as 'Heritage the Villas'). Same is confirmed by letter dated 21 April 2010 (Doc.C). He was earning a basic monthly salary of Rs 200,000, travelling allowance of Rs 20,000 and a housing allowance of Rs 60,000.

In respect of the above, plaintiff stated that as per clause 3.3 of Doc.C he can be asked to take up additional duties.

-As per letter dated 28 April 2010 (Doc.D) plaintiff had also the responsibility as Executive Chef of the kitchen and the kitchen staff of Villas Valriche. His main responsibility amongst others as described in the said letter "will be to develop the concepts, set up of the menus and assist the Resort Manager, presently Mr Stephane Dadoune in the recruitment of the Executive Sous-Chef"

Plaintiff explained that an Executive Sous Chef is the one who reports directly to the Executive Chef. He creates the link between the individual department of the kitchen, for example, bakery, butchery and all the responsible chefs and supports the Executive Chefs in their daily jobs.

- In early 2011 plaintiff was appointed by the defendant to be in charge of the kitchen at the Heritage Awali Golf and Spa Resorts.

- On 01 October 2011 plaintiff was officially appointed by the defendant to the position of Area Executive Chef for Heritage Resorts. Same is evidenced by letter dated 17 April 2013 (Doc.E) which confirms his appointment as Area Executive Chef at VLH Management Ltd, effective as from 1st October 2011 with a posting at Heritage Resorts Domaine de Bel Ombre, the new position calls an R3 Management level within the company.

Plaintiff explained the difference between an Executive Chef and an Area Executive Chef. The latter overlooks the three entities of Heritage Resorts namely Heritage Awali Golf and Spa Resorts, Heritage Telfair Golf and Spa Resorts and Heritage The Villas. He stated that the reference "R3" mentioned in the letter of 17 April 2013 denotes a particular grade within the hierarchy. He confirmed that in such capacity he was paid a productivity bonus of Rs 50,000 in November 2011 and another productivity bonus of Rs 100,000 in November 2013 as averred in paragraph 6 of the proecipe. He produced the pay advice for November 2012 dated 28 November 2012 and that of 28 November 2013 where under the item 'Special bonus' it shows that plaintiff was in receipt of Rs 50,000 and Rs 101,173 respectively (Doc.F & F1).

Plaintiff confirmed that in early 2014 the defendant, which is the Managing Company for Heritage Resorts has been going through major changes. Mr Jean Luc Naret who was occupying the post of Managing Director and was also his direct reporting Manager, was replaced by another Frenchman, Mr Pascal Prigent with a new title of Chief Operating Officer. The latter spent 3 months in the North overlooking the 4 Hotels under the brand Veranda resorts (which are Veranda Paul et Virginie, Veranda Palmar, Veranda Trou aux Biches and Veranda Grand Bay) and then moved at Heritage Le Telfair Golf and Spa Resorts as from June 2014. At the end of June 2014 following the departure of Mr Naret, Mr Prigent started managing the operations.

Plaintiff further stated that Mr Prigent also carried out his appraisal on 07 August 2014. Same started at 11.00 in the office of Mr Prigent at the hotel i.e The Heritage Le Telfair, in presence of Mr Geerish Hookoomsingh, Human Resources Manager for Heritage Resorts and Mr Stephane Dadoune, Resort Manager for Heritage The Villas. He was informed by Mr Prigent that he had invited those two persons to help him due to the fact that he did not know

him very well. He stated that those two persons were in the same hierarchy as him in the defendant's management scheme i.e level R3.

Plaintiff stated that during the appraisal exercise the very first comment made by Mr Prigent at his expense was that he is a world champion chef in a very sarcastic manner whilst at the same time waving the paper which was on his desk. Mr Prigent made other comments about the points listed in the appraisal form in the same sarcastic tone. He described the atmosphere during the appraisal exercise as being extremely tense. Right from the beginning he felt a pressure. He did not understand the presence of his colleagues whereas it was an exercise where he was supposed to be by himself.

It came out that for an appraisal exercise, the appraisee has to prepare a list of points which is submitted to the one carrying out the appraisal. This was what he did and during the appraisal exercise Mr Prigent commented on each point in an extremely sarcastic tone, sometimes repeating that there was nothing extraordinary or that it was just part of his job and sometimes saying that he did not agree about what he had written . Then Mr Prigent stated that there were too many chefs and he thought that his position will no longer be required as it was excessive and not necessarily appropriate.

Upon being shown a document entitled "Job description' (Doc.G) , he confirmed that his "Job Title" was 'Area Executive Chef" in the Category/ Grade of Manager- R3 and the main purpose of his job is described as follows: plans, organises and controls activities of kitchens and stewarding all over Heritage Resorts kitchen operations to ensure an effective service and profitability. His reporting line is described graphically at paragraph 3. Plaintiff stated that when he was told that the position as Area Executive Chef was no longer required he did not say a word as after a few minutes he was asked to leave the office. On the next day he reported the matter to the Labour Office in Bambous.

Plaintiff confirmed that on 8 August 2014 he received an email from Mr Prigent asking him why there was no 'congee' (rice soup) on the breakfast buffet as the hotel had Chinese guests, to which he had replied that it had been agreed to include 'congee' if the hotel has more than 4 rooms of Chinese guests, which was not the case. He received an updated copy of the appraisal form from Mr Prigent's secretary and he was asked to sign it, which he refused because he considered that it was not completed because the most important part of the appraisal namely at the end was left empty. He identified the copy shown to him by Counsel as the very appraisal that he was supposed to be carrying out with Mr Prigent (Vide Doc.H) and which he did not sign. He confirmed that the table on page 2 of the appraisal form refers to the comparative table which he mentioned earlier and which reflects the views of the appraisee and those of the appraiser.

Mr Rodati further testified to the effect that on 17 August 2014 Mr Prigent called him in his office and told him that the company was planning to make his position as Area Executive Chef redundant. He confirmed that Mr Prigent told him that "there was no justification for the post occupied by you" as per the averments in the defendant's plea. He stated that no particular reason was given to him as regards this statement made by Mr Prigent. The latter did not make any mention of the financial position of the defendant company. On 19 August 2014 he met Mr Jean Cyril Julienne, the defendant's Corporate Human Resource Manager in Mapou. He did not deny that he did not take any prior appointment with Mr Julienne. He explained that on the aforesaid date he had a meeting with a colleague in Mapou and as during his previous meeting with Mr Prigent the latter had intimated to him that he could talk to Mr Julienne if he felt more comfortable with the latter, so he took this opportunity to go and meet Mr Julienne. The latter allowed him in his office for a few minutes and he informed him of what was said to him by Mr Prigent. He stated that it was Mr Julienne who actually mentioned the recycling fee and he confirmed that the latter gave him a printed document in relation to the recycling fee. Following this conversation with Mr Julienne, he was given to understand that he had only two choices – either stepping down or accepting an offer. His doubt that the company was planning to get rid of him and to terminate his employment was confirmed.

Plaintiff confirmed that he met Mr Julienne again on 27 August 2014 in Bel Ombre. He admitted that the defendant wanted to know his expectations in terms of a compensation. He recalled that the name of Mr Prigent was mentioned during the conversation to the effect that a report was to be made to him. On 9 September 2014 both Mr Prigent and Mr Julienne met him and they made an offer to him in the sum of Rs 1.5 million should he accept to resign and leave at the end of September. On 18 September 2014 Mr Prigent and Mr Julienne met him again as he had to report to the proposition made to him. He told them that he believed the offer was not appropriate due to the time he spent in the company and all the circumstances and so he refused the offer of Rs 1.5 million. He confirmed that he stated that he considered that a sum of Rs 7 million would be fair and that he would be prepared to accept half of that sum i.e Rs 3.5 million on a without prejudice basis. At the material time the defendant did not increase its offer but thereafter it was increased to Rs 1.7 million.

Plaintiff further deposed to the effect that from the period 7 August 2014 to 18 September 2014 whilst he was still in employment the management started working differently with him. He felt that he was basically put aside of all the daily operations of the company. The management started bypassing him and contacted directly his assistants and took decisions from them. He was criticized for his work. He was excluded from decisions and projects. There was only one project for which he was not excluded namely concerning importation of

meat for the group. This was so because it was an important project for the entire brand in the south and it could lead to a bigger importation of meat for the entire group. Hence it was economically a good deal for the company as it could result in cost saving for the company.

Plaintiff stated that as he was being bypassed, his assistants were asked to take decisions directly. He felt that his reputation was being spoilt. He maintained all the examples which he gave in the proecipe where he was being bypassed and humiliated namely : The “Black Box Competition” on which he had been working with Mr Prigent in August but there was another one planned in December but for which he was not invited. The first meeting was held with his assistants, decisions were taken and a French Pastry Chef was invited without him being made aware of anything though he was then still the Area Executive Chef. In the same manner meetings were held to change or try new products without him being made aware of same. Products were tasted without him being made aware and in presence of his subordinates.

On the 4 September 2014 there was an announcement regarding additional responsibilities of Chef Ravi Kanhye who was overtaking responsibilities of a sea-beach club, the restaurant located on the sea beach and which was under the responsibilities of a second Executive Chef based in Telfair. At that time the said Ravi Kanhye was Executive Chef at Chateau de Bel Ombre overlooking the Heritage des Villas operations in Villa Valriche. Ravi Kanhye was under his responsibilities. However when additional responsibilities were given to Executive Chef Ravi Kanhye he was not aware of same and was just informed when the decision was taken. There were no prior discussions or consultation with him. Likewise for Executive Chef Thierry Gourdin who was also reporting to him but when responsibilities were removed from him he was not made aware of same. It was by an email dated the 4 September 2014 from Mr Stepahne Dadoune that the above announcements were made.

As regards the project of importing meat directly from Australia, plaintiff explained that together with the ‘chef’ butcher Mr Eric Verger, they were working on the quantities of meat that can be used for hotels and their quality as well as the conservation dates and stockage. They actually worked on a first shipment and tasting was done before all decisions were taken. All the different managers of the different entities as well as the procurement office were involved. He was the one leading the project and Mr Eric Verger was reporting to him as he was working under him in terms of responsibilities. But during the project he was put aside and the last final decisions about the project were no longer asked through him but directly to Mr Verger.

Plaintiff further stated that he had a practice with his direct reporting line manager Mr Naret of debriefing on a basis of one to one meeting. For him it was the best way to communicate,

to update the work process and eventually to set goals. But with the coming into office of Mr Prigent the latter stopped this practice with him though he kept doing it with his colleagues. He explained that the productivity report was a list of goals and projects that were set by the company to maximise production and productivity. Upon being shown a copy of an email dated 7 November 2014 with the title “Productivity Report- Action Plan Kitchen” (Vide Doc.J) plaintiff confirmed that same was from Karine Vigoureux to Ravi Kanhye and copied to him. However these matters in the chart should have been discussed with him first especially during an appraisal rather than being copied to him after being discussed with Ravi Knahye who was his subordinate.

There was also the National Productivity and Competitive Council project which was a very broad project as it involves the entire kitchen operations. However the objectives set were not measurable. For example he was asked to take certain measures as regards his team namely reducing manpower including a pastry chef and a chef de cuisine, which he felt could not be done. There was also the project of centralization of the bakery and the pastry and for which he was involved at the beginning but then in September after all the meetings he had with Mr Julienne and Mr Prigent, he was no longer on the project. After September he was put back on the project but he was given a deadline to finalize this project when actually he was put aside of this project for too long and decisions had been taken without him. An email dated 10 August 2014 from Mr Prigent to him regarding the centralized bakery was produced (Doc.K) and plaintiff confirmed that on the 2nd page there was a note from Mr Prigent that there was some urgency in the matter. The deadline given to him was end of October 2014.

On the 22 October 2014 the Executive Chef Ravi Kanhye was taken ill and he was requested by email to oversee the hotel operations. The said email was produced (Doc.K1) His five days leave which he had taken because it was his wedding anniversary were cancelled. This operation was something which could have been done in the normal course of things but in the meantime there were menus which had changed and some hierarchies in the kitchen that Chef Ravi Kanhye had changed and he was not aware of same. So he felt a little bit awkward.

As a result of all those incidents, he felt sad and a bit depressed. Professionally he started having doubts. After so many years he felt that everything was crumbling and was slipping out of his hands. He confirmed that on 1 October 2014 he met Mr Prigent and Mr Hookoomsingh, the Human Resource Manager for Heritage Resorts. He told them that he would not be accepting the offer of Rs1.7million and hence he were to continue with the performance of his duties. However the work system had changed. He was put back in

charge of projects for which he was put aside for several weeks and he was made to work under pressure as the target for meeting those projects were extremely tight.

Plaintiff confirmed that he wrote a letter to Mr Prigent on 9 October 2014 and copied to Mr Eynaud, a copy of which was produced (Doc.L). He referred to his meetings with Mr Prigent during which he noted points of sarcasm and arrogance. He also referred to the appraisal exercise and the meeting with Mr Julienne and he considered that there was a systematic fault finding attitude against him and which he found was harassing. In the said letter he also informed Mr Prigent that he was ready and willing to leave the company on an amicable basis but with compensation. Plaintiff further confirmed that on 16 October 2014 he had a meeting with Mr Eynaud at Awali Heritage, Awali Golf and Spa Resorts. The question of compensation of Rs 1.7 million was mentioned and he told him that compensation should be around a month salary per year of service and hence they were very far from the amount offered. On 27 October 2014 he wrote a letter to Mr Eynaud in which he disputed the figure of Rs 1.7 million – copy of which was produced (Doc.M). Following the said letter, he received a reply from the defendant dated 7 November 2014 informing him that the endeavours to reach an amicable settlement had failed and that his post would be abolished from 15 December 2014 with no payment of any compensation. Plaintiff produced a copy of the said letter (Doc.N) and stated that at the end of November 2014 he received his November salary and the end of year bonus at pro rata as shown in the Pay advice for November 2014 (Doc.P).

Plaintiff further testified to the effect that at the beginning of December 2014 Mr Hookoomsing met him and suggested to him to take 10 days outstanding local leave. He confirmed that his last working day was on the 5 December 2014 and that his employment was terminated by the defendant with effect as from 15 December 2014 upon the abolition of his post. He further confirmed that he met the Labour Officer of Bambous who advised him to go to Court. He considered that there was no justification to abolish his job and that it was simply a device to get rid of him. He further considered that the defendant already made up its mind, especially with the coming of Mr Prigent, to get rid of him. He reckoned seven years and six months of continuous service with the defendant for having been in continuous employment from 21 May 2007 up to 15 December 2014. His average monthly terminal remuneration amounted to Rs 296,000 comprising of his basic salary in the sum of Rs 200,000, travelling allowance of Rs 20,000, housing allowance of Rs 60,000; and average monthly bonus- 13th month bonus of Rs 16,666.

Plaintiff considered that in the circumstances the termination of his employment on the ground of alleged economic reasons or redundancy was unfair and unjustified. Hence his

prayer from this Court that the defendant is liable to pay to him severance allowance according to law. He is thus claiming severance allowance and indemnity in the total sum of Rs 7,260,000 made up as follows:- Severance allowance to the tune of Rs 6,600,000 and indemnity in lieu of notice in the sum of Rs 600,000.

Under cross examination, plaintiff confirmed that Doc.J refers to his job description and the level at which he was employed is the classification R3 which is a top level management. He admitted that he would know about the finances and profitability of the company. He stated that he would agree that the companies' loss and profits for the years 2012, 2013 and 2014 were negative for Heritage Resorts but not for VLH. He explained that Heritage Resorts is the brand in the south for the three hotels – namely Heritage Le Telfair, Heritage Awali and Heritage The Villas. He did not agree that the financial results for VLH were most negative as from 2012. In fact he was unaware that VLH was going through negative figures. He explained that VLH includes Heritage Resorts and Heritage Resorts is the three hotels where he was acting as Area Executive Chef. He conceded that the three hotels were in financial difficulties but not VLH . He further added that he could confirm for the year 2013 the hotels were in financial difficulties but he was not aware for the years 2012 and 2014.

As regards his appraisal as per Doc.H, he confirmed that on the first page there are the details of his job level and his role responsibilities and they are filled by him. On the second page there is the "Performance Review" and in that section there is the "Employee's views on what went well" that is, his views and the "Reviewer's views on what went well". On the next page there is an "overall performance rating" which is filled in by Mr Prigent and he confirmed that there is a little cross concerning Mr Prigent's rating of his performance. He explained that he filled in his part in advance and the second part should be discussed together but it was only sent to him some 2 days after the appraisal, as attachment to the email when he was asked to sign it. According to plaintiff it would seem that it was subsequent to his discussion with Mr Prigent that the latter filled in his column and it was then sent to him. He maintained that Mr Prigent was criticizing the points noted by him and laughing with his collegues and making fun of him in front of Mr Dadoune and Mr Hookoomsing.

Concerning the second section of "Performance and Development Action Plan" it is the same as in Section 1 with his views and those of the Reviewer i.e Mr Prigent and the third page concerns the "Action plan – Bridging the gap- Joint discussion". Plaintiff conceded that on one side there are his views and on the other side are the views of the Reviewer but he maintained that it should have been a joint discussion. On the last page is section 3 – "The way forward" which plaintiff confirmed having filled in namely the part "Assistance required

from immediate supervisor" and "Key objectives and priorities for next FY". He stated that it was not the first time that he filled in an appraisal form of this type. He did two in the past and he did it in the same way like the present one. He pointed out that the part "Training and development" should be a joint discussion but this part was not filled in during the appraisal. According to him, if he did not agree with any of the comments made by the appraiser then he did not sign the appraisal. Furthermore if he did not agree with a specific issue he cannot mention it on the appraisal form because he has no right to add anything on it; only his supervisor can add comments.

Plaintiff stated that he was aware of the figures for the year 2012 but not for 2013. However he did not recall exactly the figures for the year 2012. He conceded that as per Doc.A – his contract of employment, he had a direct report to the General Manager, who was at that time Mr Richard Stedman and as per paragraph 26 regarding the "Alteration of conditions of employment" same was normally done by mutual consent if need be. He confirmed that Docs. B and C are the new contracts which were signed subsequently. He further confirmed that as per Doc.E dated 2013 he was appointed Area Executive Chef. He identified Doc.G as being his Job Description as Area Executive Chef.

Upon being referred to his testimony under examination in chief to the effect that the defendant company which is the managing company for Heritage Resorts has been going through major changes, he confirmed having said so and explained that the changes he was referring to was a change of the managing director who was his direct supervisor. At that time it was Mr Jean Luc Naret and he was replaced by Mr Prigent. He agreed that when Mr Naret was the managing director, there was a general manager of Heritage Resorts, namely Mr Linley Thomen. He further agreed that the latter's position was made redundant in January 2014. Upon being shown an organigram of the defendant company which existed before the re organization in 2014, he stated that he was on the same line as Mr Thomen. According to the plaintiff, the said organigram was not like that in early 2014. There were five people at least on the same line reporting directly to Mr Naret namely Mr Thomen, Mr Dodds, himself, Mr Hookoomsing and Mr Theodore. According to the rankings the two resident managers were included in the team and reporting through Mr Naret. He was not aware of the present organigram of the company but upon being shown same he conceded that there is a substantial difference between the two. The document consisting of two pages showing the organigram of the company before re organization (1st page) and after re organization (2nd page) was produced (Doc.Q). Referring to the 1st page of Doc.Q, plaintiff admitted that Mr Naret was made redundant in January 2014, S Dolah in October 2013 and himself in December 2014. He did not agree that Eric Verger, chief butcher, Heritage Resorts was made redundant in early 2015. According to plaintiff the latter resigned and Mr

L Cerdor, the Sports and Leisure Manager, Heritage Resorts left the company in October 2014. He was not aware that Mr Theodore left his posting as Maintenance Manager, Heritage Resorts and was appointed as Maintenance Manager at Le Telfair in March 2015. According to plaintiff the position of Executive Housekeeper HLT and HTV was split into two.

Plaintiff agreed that there were changes in 2013 and 2014. He was aware that there was a report made by a Swiss gentleman Mr Fuchs but he did not agree that the report was discussed in front of him. He was not made aware that one of his recommendations was to abolish the post that he held within the company. He stated that Mr Fuchs was a consultant and he analysed the operations and he came up with some solutions that he considered to be the best for the company. He was not sure if Mr Fuchs was Swiss but he agreed that he was an independent consultant. He met him in the course of his assignment.

Mr Rodati confirmed that Mr Prigent called him on the 7 August 2014. He further confirmed that what is listed in the appraisal report (Doc.H) is in fact the replica of his job description in *Doc.G.* The left part of the appraisal report is filled by the person who is going to be appraised i.e the employee and the employer will fill in the right part, which in his case was Mr Prigent. On page 2 it was his recollections of what went well to which there were the comments of the employer. But according to him this was not the right way to do an appraisal. Mr Prigent did not have to reply point by point but should have written what he felt went well. Plaintiff stated that Mr Prigent started work some days after Mr Naret left and the very first meeting with him was at the end of June. He maintained that the appraisal was not done the way it should have been done and that if he were an appraiser he would have done it differently. Referring to the third page of the appraisal report, namely regarding the Reviewer's views he stated that same could be accepted as a comment but it is very vague. In relation to section 2 of the appraisal report, he confirmed that he had put down 5 points and Mr Prigent's had put up his views. Plaintiff stated that he had made his comments regarding "Areas for improvement/development needs" and Mr Prigent as his supervisor should have said 'yes' or 'no' or come out with new things if he felt he needed some improvement but he only made general comments. Hence it was not a proper appraisal. He however admitted that in his mind Mr Prigent might be wrong but everyone had his way of doing things. As regards the last part pertaining to "Agreement on performance review" he explained that the remarks in the two columns (left and right) are included as a standard in the template. Referring to page 4 plaintiff maintained that there was no joint discussion and nothing was discussed on the spot on the day of the appraisal. He further added that though on the last page of the appraisal report it is mentioned "Assistance required from immediate supervisor" Mr Prigent did not even read it as well as the "Key objectives and priorities for next FY". He stated that the best part of an appraiser should be the part when the latter

would point out to the appraisee what needs to be done and what is right and wrong. According to plaintiff in his case this was not done.

Upon being asked why in 2014 he did not point it out that the appraisal was not properly carried out, plaintiff stated that he did say so in the office of Mr Prigent when he refused to sign the appraisal. Through email he said that he cannot sign the appraisal report because it was not complete. He admitted that he did not write to any member of the management to inform them that it was a sham appraisal. He explained that he did not write because his reporting line director was Mr Prigent and he had no right to overpass his direct supervisor. He maintained that at the material time he said verbally to Mr Prigent that the appraisal was not correctly done and he was not going to sign it. He did not say so in presence of Mr Dadoune and Mr Hookoomsing because the appraisal report is not signed on the spot but when the appraisal is completed. He went to the Labour Office because he needed help. For him the way the appraisal was carried out on one hand and on the other hand Mr Prigent clearly told him that he no longer need his position in the hotel as Area Chef ,he already knew where the whole thing was heading and he feared for his position.

Plaintiff did not agree that the appraisal was done in excellent conditions with no sarcasm and no irony. He further did not agree that there was absolutely no bad move on the part of Mr Prigent. He stated that he went to the Labour office prior to Mr Prigent filling the right side of the appraisal form. It was more to protect himself because he knew that the appraisal was not properly done inasmuch as there was no joint discussions, no improvement needs and no goals set for him as a manager. He however stated that as a manager he would not be surprised that all the appraisal forms which were done by Mr Prigent were done exactly in the same way as his but according to him it did not mean anything. He further added that there was no need to do an appraisal for him because there was one done in June 2014 and a review was expected to be done after six months and then eventually after a year. According to him Mr Prigent wanted to pass some messages to him. He stated that even if for Mr Prigent it was his own way of doing an appraisal he considered that it was not properly done.

Mr Rodati confirmed that subsequent to this appraisal on the 17 August 2014 there was a meeting with Mr Prigent which concerned the possible abolition of his post. Two days after he met with Mr Julienne at the headquarters at Mapou and he took this opportunity to talk to him as after his meeting with Mr Prigent the latter told him that he could meet Mr Julienne if he would feel more comfortable with him. He conceded that the first letter which he sent to the management is dated 9 October 2014 i.e Doc. L, two months after the appraisal. At that time he did not know that his position was to be made redundant as nobody mentioned it. He

was only told that he was no longer needed and that there was going to be some restructuring. He further added that probably Mr Julienne was the only person to whom he mentioned about his position to be redundant. There was already an offer which was made to him. He admitted that there were discussions concerning his leaving the company because according to the defendant the post was going to be made redundant and there were also discussions which were amicable on both sides.

Plaintiff conceded that he wrote another letter dated 27 October (Doc.M) in which he expressed the same amicable attitude throughout. He agreed that in the said letter he was reproducing not only the facts but also expressing his feelings. He further admitted that as per paragraph 4 of the letter he again had the same positive way of dealing with things. He however did not agree that at that time it was clear in his mind that there was on the part of the company a decision to restructure the company. According to him same was clear in the letter but not in his mind. He explained that the way he was dealing with Mr Prigent was not the same way as he was dealing with Mr Eynaud and Mr Julienne. He knew what Mr Prigent was doing to him but as the latter was representing the company he needed to be polite and diplomatic. He further stated that when he wrote this letter of 27 October in his mind it was clear that his position was not existing anymore. As far as he knows his post has been abolished. He conceded that he never wrote any letters challenging the restructuration of the company. He considered that it would have been a perfect way of dealing with eight years relationship if during his appraisal things were clearly said to him. He confirmed that subsequent to his letter of 27 October, there is the letter of 7 November signed by Mr Julienne (Doc.N) and which was the last letter from the management.

As regards the issue of the black box competition, plaintiff stated that it is an international competition which takes place in all hotels. But he admitted that the defendant did one according to the wish of Mr Prigent. He did such a competition at least three times but he could not recall the exact dates. He explained that it is a culinary competition where the Chef is given a black box and it is only when he opens it that he will know what are the ingredients and he is given time to produce one or more dishes. He was not aware whether in December there was a similar exercise. He then admitted that it was not a black box competition but a different competition in the hotel in December but he was put aside. It was a pastry, chocolate competition which took place in December. There was one Gilles Reflocq, his ex colleague who came to Mauritius. He pointed out that at that time he was still in charge but it was his subordinates who were called to take part in the discussions. He was not put in copy of the emails exchanged and it was his subordinates who told him about the meeting and showed to him the documents. He did not make any complaint in writing to the management in respect of the above but he did complain verbally to Mr Prigent who was his

direct supervisor. He admitted that apart from the letters which have been produced there was no complaint in writing. He however considered that the letters were the best "résumé" he could have given. He stated that he was aware that the company was running at a loss for the year 2012. He was not aware of the figures for 2013 and 2014.

Plaintiff contended during the meeting of 1st October with Mr Prigent and Mr Hookoomsing he was told that as he did not accept the offer made to him they were expecting him back on track. It was never mentioned to him that his position will no longer be needed. He did not agree that from 17 August to November there were no other discussions apart from the fact that his post would be abolished and that the only issue was compensation. He agreed that there was a reshuffling and that same was a necessity in view of the financial status of the company.

Mr G Boolakee, Labour and Industrial Relations Officer was called as a witness in support of the plaintiff's case. He confirmed that on 8 August 2014 plaintiff came to Bambous Labour office where he was posted, to put up a complaint. He recorded plaintiff's complaint as a precautionary measure, which he read and produced (Doc.R). In cross examination he stated that he had not recorded the time at which the complaint was made. As it was a precautionary measure no enquiry was conducted.

Defendant's case

Mr Jean Cyril Julienne deposed as representative of the defendant company. He confirmed that the documents produced namely Docs.A, B, C, D, E concern the plaintiff's employment and his evolution within the various companies. Same was admitted in the defendant's plea. He further confirmed the major changes referred to by plaintiff in paragraph 7 of the plaint. He stated that the Chief Operations Officer- Mr Naret was replaced by Mr Prigent.

As regards the appraisal form – Vide Doc.H, Mr Julienne stated that he was not present during the appraisal exercise. It was Mr Dadoune and Hookoomsing who were present and were assisting Mr Prigent for that exercise. They were both at the same hierarchical level namely R3. He explained that Mr Rodati in his capacity as Area Executive Chef had also a functional relationship with the Business Unit Managers namely Mr Stephane Dadoune who was the Resort Manager of Heritage The Villas. As Area Executive Chef plaintiff was reporting to the Managing Director as well as to the G M of the other hotels.

Mr Julienne confirmed that on the 19 August 2014 he met the plaintiff as the latter came to see him at his office in Mapou. Plaintiff asked him what the law provides concerning termination of contract. Thus he made a print out of the "Recycling fee" from his laptop and gave him a copy. He further confirmed that there was a meeting on the 27 August 2014 at

Bel Ombre to ask plaintiff what were his expectations in terms of compensation for the restructuring which was under way.

The defendant's representative explained that the restructuring already started in 2013 because the profitability of Bel Ombre estate was in the red. Hence since October 2013 a Swiss Consultant, Mr Daniel Fuchs was employed by the company to see the restructurings and changes carried out within the hotels of Bel Ombre in order to gain in productivity and efficiency. Subsequently in April 2014 the latter put up a report. He stated that this question of restructuring was known to everybody, the more so as Mr Fuchs did his job in a very transparent manner in all the business units. He spent much time on the spot. According to Mr Julienne he must have been in contact with the plaintiff because there was a lot of work to be carried out in the hotel kitchens.

Mr Julienne confirmed that on the 27 August when he talked to Mr Rodati the issue of restructuring was discussed. He further confirmed that on 9 September there was an offer of Rs 1.5 million made to the plaintiff. Same was done as plaintiff did not come back to them following the meeting of the 27 August and also in a spirit to put an end to all those issues amicably. He further added that following the report of Mr Fuchs it was clear in his mind that the post occupied by Mr Rodati had to be eliminated. He produced a copy of the said report (Doc. S) which contains a list of recommendations of all the departments in the hotel, among which the abolition of the post occupied by Mr Rodati at Awali Le Telfair .

The above witness stated that at no point in time during the discussions which he had with the plaintiff had the latter complained of having been victimized or harassed in any manner. He was mandated by the defendant company to discuss with the plaintiff and all the discussions which he had with him were always being carried out in a cordial manner. He explained as the offer of Rs 1.5 million was not accepted by the plaintiff, the defendant came up with an offer of Rs 1.7 million. Same was equally not accepted and Mr Rodati made a counter offer of Rs 3 million, which was not entertained by the company. He referred to the exchange of emails to that effect – Vide Docs.M & N .

Mr Julienne stated that at no point in time during the discussions with Mr Rodati did the latter mention the non justification of the restructuring exercise. He considered that restructuring was one of the essential measures at this time, bearing in mind that there were Executive Chefs in each of the business units. Hence it was no more necessary to have an Area Executive Chef which still weighed heavily on the staff cost. It was clear that the financial results of the three Units were largely in deficit. He confirmed that there is a document from BDO which analyses the losses of the three Units for the years 2012, 2013 and 2014 and same was Rs159,000M in 2012, Rs13,000M in 2013 and Rs78,000M in 2015 respectively.

He produced the said document (Doc.T). He further confirmed that this BDO report and that of Mr Fuchs inevitably leads the company to a restructuring. Mr Julienne identified Doc.Q as being the organigram of the company before and after re organization. He stated that the second organigram (after re organization) is still the same as at to date, all the posts are still the same except that Mr Prigent has passed away and Mr Dadoune is no longer at Bel Ombre. He explained that what existed before restructuring has been completely changed. Referring to page 1 of Doc.Q, he stated that the persons mentioned therein namely Mr Naret, Mr Thomen, Mr Rodati, Mr Cerdor, Mr Mohadeb , Mrs Dolah and Mr Verger had all left the company in one way or another and had not been replaced up to date. As per the requirements provided by law, the Ministry of Labour had also been informed at the beginning of November 2014 that the company will proceed to a restructuring. He produced a letter dated 7 November 2014 addressed to the Ministry of Labour (Doc.U). He further added that he was not involved in those events as enumerated in the proecipe where plaintiff considered he had allegedly been side tracked.

Under cross examination Mr Julienne confirmed that it was for economic reasons that the defendant company had to lay off Mr Rodati as well as several other employees. The company followed the procedures as prescribed by law to inform in writing the Ministry of Labour. He also confirmed that the company also tried to find an amicable agreement with Mr Rodati. He stated that the company did make an effort to find an equivalent job for Mr Rodati but the post held by Mr Rodati did not exist in the other business units. He further confirmed that the company based itself on the accounts of the three years in particular, to consider that the economic situation was such that the solution envisaged was to separate itself from the persons mentioned in the defendant's plea. The economic difficulties concern the financial years 2012, 2013 and 2014. The three years in question concern Heritage Resorts which were all hotels on Domaine de Bel Ombre for which Mr Rodati was employed.

He has heard about a company called Kinedan, a person in the name of Cyril Michel, another company called Trimetys as well as Tamarin Hotel. Tamarin Hotel has been taken over with 50% of external shareholding from VLH Ltd. He agreed that one did not buy a hotel in a week or a month. He explained that Tamarin Hotel was first taken over by Trimetys and it was towards the end of the latter's contract that Mr Michel (of Tamarin Hotel) contacted VLH Ltd. He was not involved in the negotiations. He was not aware whether those responsible in the management of Tamarin Hotel wanted to sell the hotel around 2012 – 2013 and that the defendant company as well as the Trimetys Group were interested for the takeover. He joined VLH in 2014. He did not know that Trimetys was preferred to defendant company in 2014 because behind the Trimetys group was the Jhuboo family and the latter had very good, almost family relationships with the Chung Family who were running

Tamarin Hotel. In 2016 he was aware that the takeover between Tamarin and Trimetys did not work. He did not have all the details of the financial transactions between the defendant company and Tamarin Hotel. He did not know how long the negotiations lasted but he knew that the defendant company was informed one month before the takeover which took place in September 2016. He agreed that a minimum of verification was required concerning the status of the hotel employees. He was aware that the land on which the hotel was built was partly under lease with the government but he was not aware that the said lease was more or less expired between 2014 – 2016 and that same was to be renewed. He was not involved in all those procedures.

Mr Julienne explained that the financial state of Heritage Resorts showed significant losses, hence the idea of having enlisted the services of an external consultant to recommend correctives measures to the company in order to lighten the structure of Heritage Resorts and to make it become profitable. He maintained that the shareholders of the Tamarin hotel are different from the shareholders of Heritage Resorts. He admitted that the defendant is Veranda Leisure and Hospitality Ltd – VLH, and that the takeover of Tamarin Hotel was carried out partly by Veranda which holds 50% of the shareholders. He agreed that 50% of Rs210 million represents much money but he explained that same was done 2 years after Mr Rodati's employment was terminated. He stated that he cannot say anything of what happened before 2014 concerning negotiations for the takeover of the Tamarin Hotel because he was not yet part of the defendant company. He agreed that in August 2014 he was informed by Mr Prigent that in view of the state of affairs of the company the latter had to lay off Mr Rodati. In September 2014 there was an offer of Rs 1.7 million made to Mr Rodati and subsequently in October 2014 following plaintiff's refusal of the said amount of compensation made to him, the defendant's stand was that he continued to perform his duties normally. He confirmed that there was a meeting between plaintiff , Mr Prigent and Hookoomsing in October 2014 but as there was no agreement reached, defendant's stand was to continue the collaboration until a solution is found.

Mr Julienne stated that it was in July 2014 that Mr Cyril Michel contacted the CEO of VLH Ltd to know whether he was interested to take over the Tamarin hotel. He confirmed that the Trimetys company was also interested in the takeover and the deal was first between Tamarin and Trimetys. In 2016 problems arose between Tamarin hotel and Trimetys and the latter separated itself from Tamarin hotel. In July 2016 Mr Michel contacted again defendant company and the latter took over Tamarin hotel in September 2016. He explained that if the deal for the takeover of Tamarin hotel was not made in July 2014 when Michel contacted Verandah, it was obviously for economic reasons. And 2 years later the economic situation was better and this was the reason why the defendant expressed its interests in taking over

the hotel as from September 2016. He is not aware of the relationships between the Jhuboo and Chung family. He is aware that it is the Jhuboo family who are the shareholders/directors of the company Trimetys and that part of their activity is the management and ownership of hotels in Mauritius and Rodrigues. He further stated that having himself been involved in the due diligence process for the takeover of Tamarin hotel, it was not until August 2016 that they were mobilized for the takeover in September 2016.He did not agree that part of the work was already done in 2014. In 2014 he was already part of the defendant company and he had never set foot in Tamarin.

In re examination he stated that as per plaintiff's contract of employment (Vide Doc.G) the latter was occupying the post of Area Executive Chef and there was only himself in this position. The other Chefs de Cuisine reported to Mr Rodati whilst the latter had a double line reporting namely to the Managing director and the General Managers of the hotels. He confirmed that he joined employment with defendant company since January 2014 as Head of HR and as to date he still holds the same position. As Head of HR he was never involved in any discussion regarding Tamarin hotel in 2014. Upon being shown document T he confirmed that same shows the financial status of Heritage Resorts. The defendant in the present case is VLH and in 2016 the latter took over 50% of the activities of Tamarin hotel. As from 2014 the financial situation of the company started to improve gradually. From Rs79 million losses it came down to Rs 50 million in 2014-2015, Rs 18 million in 2015-2016, Rs 30 million in 2016 – 2017.

Mr Stephane Dadoune was called as a witness to depose in support of the defendant's case. He adduced evidence which was in substance as follows: He joined employment with the Veranda group in 2009 as Hotel Manager. He confirmed that Doc.Q reflects the truth regarding the organization chart of the company in 2014 – before and after reorganization. He explained that he is in the third row being the Resort Manager of Heritage Villas. Plaintiff too is at the same level as well as the other persons mentioned in the said row. They are all of grade R3. His reporting line was Mr Linley Thomen who is of grade R2.

Upon being shown Doc.H, the above witness confirmed that same is an annual performance review appraisal concerning Mr Rodati which took place on 7 August and during which he was present as well as Mr Prigent and Hookoomsing. He stated that he used to do appraisal exercises and that it was not abnormal that in the present circumstances the appraisal exercise was carried out by three persons. He explained that it is quite common for someone who just joins a position to refer to people who know the appraisee. This was done in the past. He did not agree to the version of Mr Rodati to the effect that the appraisal exercise was done in a partisan manner. He admitted that Mr Prigent's personality was

certainly different from that of his predecessor. It was his way of being and of dealing with all the staff namely to be a little bit dry and harsh. On the material date he did not really feel anything negative expressed towards Mr Rodati.

The above witness confirmed that at the end of 2013 until April 2014 there was one Mr Fuchs whose services were retained to do a study on the productivity of the group. He got the opportunity to meet Mr Fuchs as on several occasions there were briefings on the preliminary reports which were presented to the management teams. He identified Doc.S as the documents which were shown to the management teams and which were discussed with the entire management team since it was also their responsibility to implement the recommendations. There were several recommendations made, several items were suggested among others the elimination of the job of Area Executive Chef which was occupied only by Mr Rodati. He further added that most of the recommendations were implemented. At the material time being the Manager he was in charge of all the Villas but subsequently the post of manager was eliminated. He was then relocated but the recommendations were followed and posts which were redundant and not necessary were eliminated.

Under cross examination Mr Dadoune stated that an appraisal exercise is by essence a discussion. He admitted that during the said exercise Mr Prigent made some comments like "you are a world championship" but he explained that it was just his own way of doing things and he was not aiming at anyone in particular. According to him, when Mr Prigent stated that "You are a world championship" same forms part of the discussion. He stated that he cannot answer how Mr Rodati felt about Mr Prigent's comments and that probably when a comment is made one person can feel it one way and another person can feel it another way. He admitted that in an appraisal exercise there is a hierarchy but he did not agree that there is on one side a dominant person and on the other side a person who is dominated. Though there is a hierarchical relationship there is no pressure exerted during this exercise.

Mr Dadoune admitted that Mr Fuchs's report concerns several divisions. He agreed that the group has villas, golf and several establishments. He stated that there are forecasts that are done every three months but these are only estimates of customers' arrivals and revenues. He considered that at this stage one cannot speak of 'bilan' because accounts are not yet closed and calculations not yet done. One can only talk about forecasts which are being carried out every quarter. He admitted that if the future were very dark naturally these forecasts would demonstrate same.

Mr Humza Dawood, a Senior Audit Manager at BDO was also called as a witness for the defendant's case. He confirmed that Doc.T dated 11 October 2016 emanated from BDO and

concerns the state of accounts of three hotels – Heritage le Telfair, Heritage Awali and Heritage The Villas for the period 2012, 2013 and 2014. He further confirmed that the figures mentioned in the said document were adopted after reading the accounts of the 3 hotels.

Under cross examination the above witness conceded that he has come to testify in Court without any document. Normally there is a file with figures with notes to the figures, and the explanations of BDO. He admitted that Doc.T is a certificate which is in fact a conclusion reached after an analysis of the figures, the balance sheets, the notes and the opinion of the auditor and his recommendations. He agreed that the said certificate i.e Doc.T stops at the date of 30 June 2014 and hence it covered the period 01 July 2013 to 30 June 2014.

In re examination the above witness confirmed that the figures mentioned in Doc.T are the same which were filed at the Registrar following the audit which was carried out. Doc.T is only a "recap".

Submissions

Learned Senior Counsel appearing for the defendant referred to the various documents which were produced namely documents A,B,C and D which show the various stages of the plaintiff's employment within the group whilst document E which is dated 17 April 2013 is the plaintiff's appointment as Area Executive Chef; Doc.G is the plaintiff's job description and his reporting line is the Managing Director and the GM Hotels RM HTV Villa and Le Golf.

Learned Senior Counsel submitted that there was a report which was made by Mr Fuchs and there were discussions which were held with all the parties concerned. As per the plaintiff's own averments in the plaint there have been major changes in the company in 2014. It is submitted that these changes have led to the departure of important players in the organigram which shows that the recommendations of Mr Fuchs, which have never been challenged, have been complied with. It is the defendant's contention that there have been negotiations which started since August 2014. Learned Senior Counsel pointed out that on the 19 August 2014 plaintiff went to meet Mr Julienne and asked for certain clarifications. On the 27 August an offer was made and later on in September it was increased to Rs 1.7M. There was a counter offer on the part of the plaintiff. All this shows that there were negotiations being carried out and the first letter from the plaintiff is dated 9 October well after the negotiations and in which he puts the blame on certain things and expressed his feelings. Plaintiff's second letter, addressed to the CEO was referred to (Doc.M) namely the 2nd paragraph in which plaintiff expressed his thanks to the CEO for having spared his time to have a meeting with him and to have explained to him the reasons underlying management decision to streamline and right size the organization of the company, hence to suppress his post. Plaintiff also expressed the wish to part amicably. It is therefore submitted

that same was an explicit recognition that what was being performed was done in good faith and that there was no solution with regard to plaintiff's post so that the latter himself wished that there should be an amicable solution. This explains the counter offer made by the plaintiff as per the annex to his letter. Defendant contended that it had tried whatever could be done but unfortunately it had to part with the plaintiff as per the letter dated 7 November 2017 (Doc.N).

Learned Senior Counsel highlighted two issues raised by the evidence adduced by the plaintiff namely the issue of the appraisal exercise and the issue of restructuration. It is submitted that the appraisal exercise is an exchange of views between the parties and one has not necessarily to agree with the other. The appraisal report was referred to and according to Mr Julienne this document had to be signed but plaintiff refused to do so although in the previous years the same type of exercise was carried out. It is therefore the defendant's submission that plaintiff's reaction was far fetched. At no times did he complain of whatever wrong doing on the part of the defendant apart from going to the Labour Office as per Doc.R. It was pointed out that the said document was never put to the defendant's representative at any stage.

As regards the issue of restructuring, the report of Mr Fuchs was referred to (Doc.S) and it was submitted that this report clearly shows that something has to be done. The report from BDO to was referred to (Doc.T) and Learned Senior Counsel pointed out that as per said report 3 units were negative based on their financial results. Reference was also made to the evidence of Mr Julienne in respect of the reason behind this restructuring exercise which was carried out with an obvious target and that this restructuring was discussed with all the in charge. Emphasis was also laid on the fact that during cross examination plaintiff agreed that Mr Fuchs was an independent consultant and that this reshuffling was a necessity in view of the financial status of the company. Furthermore plaintiff never wrote any letter concerning his non acceptance of the restructuration. It is therefore the defendant's contention that there is an acceptance on the part of the plaintiff that this issue of restructuration was linked to the financial status of the company namely the losses incurred by the company. Learned Senior Counsel submitted that the exercise carried out by the defendant was fair and hence plaintiff's action cannot succeed.

Learned Senior Counsel appearing for the plaintiff highlighted three main aspects of the plaint: the appraisal issue; the humiliation faced by the plaintiff as per the examples given in the plaint and the termination of his employment on the ground of redundancy which he considered was not justified. He referred to the certificate of BDO which refers to the period ending 30 June 2014 i.e the financial year 1 July 2013 to 30 June 2014 and the appraisal

which took place on 7 August 2014, which Learned Senior Counsel pointed out is the next financial year which is not covered by BDO. It was contended that the pleaded case for the defendant as per paragraph 4 h of the plea is that as at 7 August 2014 at no time during the meeting did Mr Prigent tell the plaintiff that his position as an Area Executive Chef was no longer required. Hence the position of the plaintiff was still a protected one. The defendant's version was that to a certain extent plaintiff's position as Area Executive Chef was not being exploited to the full extent in the sense that he was being called upon to do routine matters and thus he was being employed below optimum level. Learned Counsel highlighted the fact that this defence was then no longer pursued because there is the other intervening factor namely negotiations for plaintiff to leave his employment. It was then that the excuse of economic grounds was evoked as per paragraph 9 (b) of the defendant's plea.

Learned Senior Counsel submitted that the true reason why the employment position was being reconsidered was because the defendant had concluded that plaintiff was doing routine matters. Same is borne out at paragraph 4(g) of the plea. He pointed out that if the defendant had a solid reason of economic ground to impart to the plaintiff same should have been imparted to him.

It was furthermore pointed out that it was also the pleaded case for the defendant as per paragraph 23 (a) (ii) of the plea that plaintiff was to "continue performing his duties normally". Hence it is the plaintiff's contention that this averment in the plea is an invitation for the plaintiff to continue to work and this was in the financial year 2014-2015. Hence it is the plaintiff's contention that in the teeth of such admission it cannot be expected that some days or weeks later plaintiff was dismissed from his employment.

Learned Senior Counsel further submitted that considering those admitted facts in the pleaded case of the defendant, if there was a re organization there would have been no harm to redeploy the plaintiff like was the case for Mr Dadoune ; and secondly defendant could have considered to keep the plaintiff for a few months because in 2016 there was no economic hardship facing the defendant, the more so it came out that defendant was actively negotiating the purchase of a hotel which was concluded in 2016. In the light of all the above it was submitted that the plaint must succeed.

In reply to the above submissions, Learned Senior Counsel for the defendant pointed out that Mr Fuchs was employed specifically to look into the negatives and positives of the business. His report shows that the post which was the single post held by one individual had to be abolished -this was in April 2014 and same was discussed with all the employees. As from 19 August it was the plaintiff himself who went and met Mr Julienne to ask for particulars of the recycling fee. It was therefore contended that plaintiff was the one who

started the negotiations because he knew that that there was no future and these negotiations lasted until November when he was asked to carry on working as usual because it would be contrary to logic to kick out a person before trying to see whether there was a possible re deployment. But plaintiff could not be redeployed because the post of Area Executive chef was the only post.

Regarding plaintiff's contention of the defendant's active negotiations in the purchase of the hotel, it was contended that this was never suggested by the plaintiff and furthermore apart from the evidence of Mr Julienne the Court has not been favoured with any evidence. Counsel highlighted the fact that Mr Julienne started employment in January 2014 and as far as he was concerned there was never any discussion on that issue. Mr Julienne was the group HR Manager and he was involved as from July/ August 2016 and it would appear that by that time the results of the implementation of the report of Mr Fuchs must have been benefitted to the company. It was therefore submitted that the employer was perfectly entitled to manage its business in the best interest of the company and there was nothing sinister if the group was actively engaged in 2016, two years after in the part purchase of the hotel

Analysis

Undisputed facts

It is common ground that plaintiff was an employee of Veranda Leisure Hospitality (VLH), the defendant in the present case and as at 01 October 2011 he was occupying the post of Area Executive Chef at VLH Management Ltd with a posting at Heritage Resorts Domaine de Bel Ombre, which post was at R3 Management level within the company as evidenced by letter dated 17 April 2013 (Vide Doc.E). It came out that Heritage Resorts comprise the three entities – Heritage Awali, Heritage Telfair and Heritage the Villas. It is not disputed that in early 2014 the Managing Director Mr Jean Luc Naret, who was plaintiff's direct reporting manager was replaced by Mr Pascal Prigent, a French national and in that capacity he carried out plaintiff's appraisal exercise.

By letter dated 07 November 2014 (Vide Doc.N) plaintiff was informed that in the wake of the ongoing restructuration process taking place within the company, redundancy has become inevitable and his position as Area Executive Chef shall be abolished with effect from 15 December 2014. There is also undisputed evidence on record that the defendant employed a Swiss external consultant Daniel Fuchs to do a productivity analysis of the company since October 2013 following which he put up a report – (Vide Doc.S) which contains a series of recommendations.

Disputed facts

It is the plaintiff's contention that the appraisal exercise was not properly carried out. According to his version he was subjected to many sarcastic comments and criticisms from Mr Prigent in presence of Mr Dadoune and Mr Hookoomsing. Subsequently he was being bypassed and sidelined in many of the tasks he was usually in charge of as averred in the proecipe and described by him during his testimony in chief. He therefore considered that the abolition of his post was only a colourable device to get rid of him, the more so that there was no economic hardship facing the defendant as contended by the latter inasmuch as it was engaged in the purchase of the Tamarin hotel, the sale of which was concluded in 2016. It is therefore the plaintiff's case that the termination of his employment on the ground of redundancy was unjustified and hence his claim for severance allowance at punitive rate in the sum of Rs 6,600,000.00 and indemnity in lieu of notice in sum of Rs 600,000.00 together with interest at 12% per annum on the amount of severance allowance payable as from the date of dismissal until final payment.

On the other hand it is the defendant's contention that there was nothing sinister in the appraisal exercise carried out by Mr Prigent who had his own way of doing things. It is further contended that plaintiff's post of Area Executive Chef was abolished following the recommendations put up in the report of Mr Fuchs who was employed by defendant company in the process of the restructuring carried out by the defendant company in view to gain profitability and productivity as per the version of the defendant's representative in Court - Mr Julienne. Hence it is the defendant's case that it acted in good faith and bona fide and took the only decision it could reasonably take in the circumstances. It therefore denied that the termination of the plaintiff's employment was unfair and/or unjustified.

After careful consideration of all the evidence on record and the submissions of Learned Senior Counsel for the plaintiff and defendant respectively, the issue for determination before this Court is whether the termination of plaintiff's employment on the ground of redundancy was justified.

The law applicable

The plaintiff's employment having been terminated on the 15 December 2014, the applicable legislation is the ***Employment Rights Act (ERA) 2008*** as amended by Act No.6 of 2013 (hereinafter referred to as "The Act") which came into effect on the 11 June 2013.

It clearly transpires from the evidence on record that the termination of the plaintiff's employment was not related to any "faute" committed by the plaintiff – employee, but only on account of the abolition of his post for economic reasons. Thus the termination of his

employment was based on “motifs économiques” and may be termed as a “licenciement économique” (See ***Introduction au droit du travail mauricien – Dr D. Fok Kan pg 390).*** “Licenciement économique” is defined in the French Code du Travail in its article L. 321 -1 as the termination of employment of *“la personne du salarié résultant d’une suppression ou transformation d’emploi ou d’une modification substantielle du contrat de travail consécutive notamment à des difficultés économiques ou à des mutations technologiques”……..*

In the present state of our law, in such a particular situation the employee will be entitled to payment of severance allowance if the grounds for termination of his employment do not constitute valid reasons and hence causing the termination of the employment to be unjustified.

The provisions of the law relevant to this issue of termination of employment on the ground of redundancy and payment of severance allowance for unjustified termination of employment are ***sections 39B and 46 (5)(d) of the Act*****,** the subsections applicable to the present matter are hereunder reproduced for ease of reference:

39B. Reduction of workforce

(1) In this section, “employer” means an employer of not less than 20 workers.

(2) An employer who intends to reduce the number of workers in his employment either temporarily or permanently or close down his enterprise shall give written notice of his intention to the Permanent Secretary, together with a statement of the reasons for the reduction of workforce or closing down, at least 30 days before the reduction or closing down, as the case may be.

(3) Notwithstanding this section, an employer shall not reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise unless he has-

(a) ……..

(b) Where redundancy has become inevitable –

(i) established the list of workers who are to be made redundant and the order of discharge on the basis of the principle of last in first out; and

(ii) given written notice required under subsection (2).

(4) Where an employer reduces his workforce or closes down his enterprise, the employer and the worker may agree on the payment of compensation by way of settlement.

……..

……..

(11) Where an employer reduces the number of workers in his employment either temporarily or permanently, or close down his enterprise, in breach of subsections (2) and (3), he shall, unless reasonable cause is shown, pay to the worker whose employment is terminated a sum equal to 30 days' remuneration in lieu of notice together with severance allowance, wherever applicable, as specified in section 46 (5)

46. Payment of severance allowance

(1) Subject to subsection (1A), an employer shall pay severance allowance to a worker as specified in subsection (5) where the worker has been in continuous employment with the employer –

(5) Where a worker has been in continuous employment for a period of not less than 12 months with an employer, the Court may, where it finds that –

(d) the grounds for the termination of agreement of a worker for economic, technological, structural or similar nature affecting the enterprise, do not constitute valid reasons;

order that the worker be paid severance allowance as follows –

(i) for every period of 12 months of continuous employment, a sum equivalent to 3 months' remuneration; and

(ii) for any additional period of not less than 12 months, a sum equal to one twelfth of the sum calculated under subparagraph (i) multiplied by the number of months during which the worker has been in continuous employment of the employer.

Discussion

It is trite law that the burden of proving that the termination of a worker's employment was justified lies on the employer (See ***Harel Frères Ltd v Veerasamy [1968] MR 225***. In the instant case it is incumbent on the defendant-employer to prove on the required standard of proof that the ground on which the plaintiff's employment was terminated, was justified so as to be relieved from the payment of severance allowance as claimed by the plaintiff-employee.

The sole ground relied upon by the employer was one of redundancy and hence the abolition of the post of Area Executive Chef held by the plaintiff. In that context it is significant to point out that the defendant-employer had complied with ***section 39B(2) of the ERA 2008*** by giving the required written notice to the Permanent Secretary of the Ministry of Labour at least 30 days prior to the abolition of the position of Area Executive Chef held by the plaintiff– See Doc.U. Furthermore it is on record that there were negotiations for

payment of a compensation to the plaintiff as borne out in evidence and supported by Docs. M and N. However as per the undisputed evidence on record no settlement was reached.

The question to be determined by the Court is whether the termination of the plaintiff's employment on the ground of redundancy constitute valid economic reasons warranting the abolition of the position held by the plaintiff- employee. Indeed the wordings of Section 46(5) (d) of the Act (reproduced above) clearly shows the intention of the legislator to lay at the door of the employer the burden of justifying the validity of the economic ground which brought about the termination of the employment. This explains the reasoning of the Supreme Court in the case of ***La Bonne Chute Ltd v Termination of Contracts of Service Board [1979] MR 172*** where it was held as follows " ……*In determining whether an employer is justified in reducing his work force, the Board should not limit its exercise to a mathematical computation, but consider also whether the employer has shown good cause to lay off the particular worker or workers concerned. To hold otherwise would mean that, in giving notice, the employer could even fail to disclose the names of the workers destined for the axe, so that the proceedings before the Board would take place without the worker whose livelihood may be at stake being given a hearing."*

In the case of ***Nestlé Products (Mtius) Ltd v Dabysingh*** [1988 SCJ 423] it was held that *"Economic, technological, or structural grounds are usually referred to in French law as motif économique resulting from economic or financial difficulties (d'ordre conjoncturel) or as a result of technological changes (d'ordre structurel). However it has been reported that even in the absence of any financial difficulties or technological changes, there could still be licenciements pour motif économique where the termination or modification is being made to preserve the competitiveness of the business."*

The same line of reasoning was adopted in the Supreme Court case of ***Plaine Verte Co-operative Store Society Ltd v. Goolrose Rajabally*** [1991 SCJ 227] where it was held that "*the Court should not substitute itself to the employer who keeps the last word as to how his business is to run and managed"*

Now turning to the case in hand, in support of the defendant's contention for the termination of plaintiff's employment on the ground of redundancy the Court takes into account the evidence adduced by the defendant to the effect that the abolition of the post held by the plaintiff was in line with the restructuring exercise carried out by the defendant in the process of the cost cutting measures recommended by the Swiss consultant employed by the defendant. Indeed it is on record that one Mr Fuchs was employed by the defendant since October 2013 to carry out a productivity analysis in furtherance of the restructuring exercise which already started in 2013 because of the negative profitability of the Bel Ombre Estate.

The Court bears in mind that the report put up by Mr Fuchs (Vide Doc.S) in April 2014 was not challenged. And it is the defendant's case that based on the recommendations of this report that defendant considered the abolition of some posts within the company and among which was that of plaintiff.

An analysis of the series of recommendations put forward by Mr Fuchs shows that the latter suggested several cost cutting measures for Domaine de Bel Ombre (DBO), Awali, Le Telfair under the heading "Non-Investment Costs" which are in fact a series of items considered to be non profitable compared to the "Investment Costs". Among those non-investment costs the Court finds that same include, among others, the abolition of several posts and departments like for example the appointment of a new GGM, the position of RM for the Villa's, Junior Sous Chef Pastry, HR department, personal assistant and GM of the Villas, GM of Golf and several other posts at Awali and Telfair and among which was that held by the plaintiff (i.e Brand Executive Chef). Other measures also include the merging of several divisions and units. The Court also bears in mind the document from BDO (Vide Doc.T) in respect of the loss/profit for the financial years 2012, 2013 and 2014. Doc.T is self explicit as to the losses incurred by the three entities of Heritage Resorts and Heritage DBO office. Evidence was also adduced that following the recommendations of the Fuchs's report and the report from BDO the company has caused a re organization of its executive team as evidenced by Doc.Q. And the Court notes that the organigram of the Heritage Resorts after re organization shows that several executive and management posts no longer existed. It is to be noted that it is not disputed that the organigram after re organization has remained unchanged as at to date as per the sworn testimony of Mr Julienne.

Based on all the above the Court is satisfied that in the years 2013 – 2014 the defendant was suffering from financial constraints and it was in that context that a restructuring of the company proves to be necessary. Furthermore as elaborated above this restructuring has led to the elimination of some posts at the executive level as recommended in the report of the independent expert, Mr Fuchs. In fact it is to be noted that plaintiff admitted during cross examination that the restructuring was necessary in view of the financial difficulties of the company. Though he stated that he was aware that the financial years 2012, 2013 and 2014 were negative for Heritage Resorts and not for VLH, however it is on record that VLH includes Heritage Resorts and the latter comprises the three hotels where plaintiff was acting as Area Executive Chef. Hence it cannot be said that the plaintiff was not aware of the restructuring sought to be carried out by the defendant in order to gain in productivity and efficiency. It is also on record that the post which was held by the plaintiff had no equivalent post in any of the group of hotels managed by the defendant so that plaintiff could not have been redeployed or relocated in the other units. As per the evidence adduced by Mr

Julienne, during the discussions which he had with plaintiff at no point in time did the latter complain about the non justification of the restructuring envisaged by the defendant.

The Court does not lose sight of the plaintiff's contention that the above economic reasons brought forward by the defendant were only a colorable device to get rid of him. To that end plaintiff has adduced evidence to show that right from the beginning when the new Chief Operating Officer took office namely late Mr Prigent, the appraisal exercise to which he was subjected was not properly carried out as Mr Prigent made sarcastic remarks and comments to him. Furthermore he considered that subsequently he was being side lined and bypassed as per the examples averred in his plaint and elaborated during his testimony in Court. As regards the appraisal exercise the Court takes note of the defendant's version on record to the effect that Mr Prigent had his own way of doing things and should not necessarily act in the same manner as his predecessor. Indeed the Court is of the view that there is not a stereotyped way of doing an appraisal exercise. Same can be done differently by different persons. Furthermore it is on record that the same exercise was carried out in the same manner by Mr Prigent for the other employees of the company. Whilst it may be true that Mr Prigent was quite sarcastic in his approach towards plaintiff during the appraisal exercise however the Court takes into account the evidence on record that late Mr Prigent was described as being quite dry and harsh person, and this could explain why plaintiff felt the way he did during the appraisal exercise.

Concerning the situations described by plaintiff where he was allegedly being side lined and bypassed, the Court notes that those issues are irrelevant for the purposes of the present case which is not one of constructive dismissal but of alleged unjustified termination of employment on the ground of redundancy. Even if plaintiff was to be believed that he was being bypassed and sidelined this had no bearing on the ground for which he was made redundant namely the abolition of his post which as per the evidence adduced by the defendant had no "raison d'être" and constituted one of the cost cutting measures recommended by the Swiss consultant in his report. In fact as already stated above, the said report was not challenged. It therefore follows that the recommendations therein were not challenged. Hence plaintiff cannot now contend that the abolition of his post (which was one of the recommendations of the report) – was a colourable device to get rid of him.

It is significant to point out that the appraisal exercise was done in August 2014- that is after the productivity study carried out by the Swiss consultant. Hence it was in that context that plaintiff was already told by Mr Prigent during the appraisal exercise that his day to day duties amount to routine works which can be performed by other Kitchen Chefs. In fact as explained by Mr Julienne there were Executive Heads in each of the business Units and

therefore it was no more necessary to have an Area Executive Chef which weighed heavily on the staff cost. This lends support to the defendant's case that the post of Area Executive Chef was no longer required and that it was in the interests of the company to abolish it. As per the case of ***Plaine Verte Co-operative Store Society Ltd v. Goolrose Rajabally*** (supra) the prerogative to manage and organize his business lies with the employer who knows best how to run his business so as to make it more effective and productive. In fact this is a well established principle in the french jurisprudence as pointed out by ***Camerlynck in Dalloz, Droit du travail, Contrat du travail, tome 1 at note 464 :***

"Selon une jurisprudence traditionelle confirmée, le chef de l'entreprise propriétaire étant seul responsable du risque ainsi assumé, bénéficie corrélativement du pouvoir de direction; il décide donc seul de la politique économique de l'entreprise, de son organisation interne et des modalités techniques de son fonctionnement qu'il peut à tout moment aménager à son gré. Le juge ne saurait en aucun cas se substituer à lui dans l'appréciation de l'opportunité des mesures prises, quelles que soient les conséquences au regard de l'emploi".

It was also the plaintiff's contention that as defendant became owner at 50% of Tamarin Hotel in 2016 it cannot be said that the company was facing economic constraints which would justify the abolition of the plaintiff's position as Area Executive Chef. Whilst there is undisputed evidence that defendant acquired Tamarin Hotel at 50% in 2016, however plaintiff's version that negotiations for the acquisition of Tamarin Hotel already started since 2013-2014 i.e at the time the defendant company was economically in the red, was not substantiated by any other evidence apart from the above version being put to the representative of the defendant – Mr Julienne, who stated that he was not aware of what happened before 2014 because he did not form part of the company yet. Likewise regarding plaintiff's version put to the said representative about the close relationship between the Jhuboo family of the Trimetys group and the Chung family of Tamarin Hotel which caused the latter to prefer Trimetys than VLH for the acquisition of the Tamarin hotel in 2014. Whilst defendant had admitted that it was contacted in 2014 for the acquisition of Tamarin Hotel, it is however its contention that the deal did not work precisely because of the economic constraints at the time. And in the light of all the evidence on record such a version seems most plausible.

The Court also takes into account the evidence adduced by Mr Julienne to the effect that two years later in 2016 when VLH was contacted for the taking over of Tamarin Hotel, the economic situation of the company was better and hence the company expressed its interests in the acquisition of Tamarin Hotel. Mr Julienne had also adduced evidence to the

effect that he was personally involved in the due diligence process for the taking over of the Hotel in 2016 and it was not until August 2016 that same started and not in 2014.

Taking into account all the evidence on record, the Court is of the considered view that the taking over of the Tamarin Hotel two years after the termination of plaintiff's employment did not in any case point towards the unfairness of the termination. In fact as rightly pointed out by Learned Senior Counsel for the defendant, it can be inferred that the implementation of the recommendations of Mr Fuchs proved to be beneficial to the company which, as per the evidence of Mr Julienne started to incur less losses and the financial situation started to improve though profits were not yet registered in 2016.

Conclusion

In light of all the above the Court is of the considered view that at the time the defendant-employer took the decision to lay off the plaintiff-employee, the company was facing financial difficulties and a restructuring was necessary leading to the abolition of several posts among the cost cutting and corrective measures recommended by the Swiss Consultant – Mr Fuchs in his report so as to make the company more profitable. The Court is satisfied that the defendant has shown good and reasonable cause in its decision to abolish the plaintiff's position as Area Executive Chef as defendant has established that the post of Area Executive Chef was no longer necessary in the new organigram management chart of the defendant company. Hence the Court is not satisfied that the plaintiff has proved his case on a balance of probabilities that the termination of his employment on the ground of redundancy was unfair and unjustified. Thus he is not entitled to the payment of severance allowance and indemnity in lieu of notice.

Based on all the above I according dismiss the present plaint.

Taking into account all the facts and circumstances of the present case, I make no order as to costs.

This 20th August 2020

K. Bissoonauth (Mrs)

President, Industrial Court.