

**MARIE JOANNE MARS VS KITE SPIRIT**

**2023 IND 51**

**MARIE JOANNE MARS VS KITE SPIRIT (MAURITIUS) LTD**

Cause Number: 332/22

**THE INDUSTRIAL COURT OF MAURITIUS**

(CIVIL JURISDICTION)

In the matter of:-

**MARIE JOANNE MARS**

Plaintiff

**VS**

**KITE SPIRIT (MAURITIUS) LTD**

Defendant

**JUDGMENT**

*Introduction*

The Plaintiff was in the continuous employment of the Defendant as a shop assistant since the 18<sup>th</sup> April 2008. By virtue of a claim backed by the Plaintiff's testimony in Court, she is claiming from the Defendant the sum of Rs 100,005.80/- representing wages as indemnity in lieu of notice, arrears on wages, refund of outstanding annual leave, end of year bonus.

*The facts*

The Plaintiff testified that she was employed on a 6 day-week basis for and in consideration of a monthly basic wage of Rs 15,366. She averred that by way of letter dated the 8<sup>th</sup> June 2020, the Defendant reduced her working days to 3 days per week. Her basic salary was reduced to Rs 8,510 per month for July 2020 to December 2020 and Rs 9,810 per month for January 2021 to 30<sup>th</sup> June 2021. According to the Plaintiff, she should have been paid the

additional remuneration of Rs 375 per month as from January 2021 as per the Additional Remuneration Regulations 2021.

The Plaintiff contended that the Defendant terminated her employment on economic ground on the 30<sup>th</sup> June 2021 and failed to remunerate her 22 days outstanding annual leave for year 2021. She has been paid an amount of Rs 13,617 as indemnity in lieu of notice and an end of year bonus for year 2021.

In view of the above, the Plaintiff claimed from the Defendant the sum of Rs 100,005.80/- made up as follows:

(i)	Wages as indemnity in lieu of notice	Rs 15,741
(ii)	Arrears on wages for July 2020 to December 2020	Rs 41,136
(iii)	Arrears on wages for January 2021 to June 2021	Rs 35,586
(iv)	Refund of 22 days outstanding annual leave for year 2021	Rs 13,319.30
(v)	End of year bonus for year 2021	Rs 7,870.50
	Less amount paid	(Rs,13,647)
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		Rs 100,005.80
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In the present case, the Defendant has left default despite a substituted service effected on the Defendant, by the posting of the true and certified copy of the plaint with summons at its registered office on the 05<sup>th</sup> April 2023.

### *Observations*

I have assessed the evidence on record and the documents produced. It is to be remembered that *“making out a case does not mean that one has got to jump both feet all over the principles of evidence and all the matters required in order to make out a case...”*. **(VELVINDRON VS NOORDALLY (1979) MR 243).**

The undisputed facts of the case reveal that the Plaintiff was in the continuous employment of the Defendant from the 18<sup>th</sup> April 2008. The Plaintiff was legally entitled to a monthly wage and bonus allowances. The Plaintiff has undisputedly established that the Defendant has failed to pay to her the wages as indemnity in lieu of notice, the outstanding wages

and annual leave as well as the end of year bonus. The version of the Plaintiff has remained credible, unchallenged and unshattered.

In the circumstances, I find that the Defendant has failed to uphold the provisions of the **THE WORKERS' RIGHTS ACT 2019**. It is therefore indebted to the Plaintiff in the sum of Rs 100,005.80/- representing the outstanding wages, annual leave and end of year bonus.

### *Conclusion*

In light of the above, I find that the Plaintiff has established her case on a balance of probabilities. I order the Defendant to pay to the Plaintiff the sum of Rs 100,005.80/- together with interests at the rate of 12% per annum on the amount of remuneration due from the date of non-payment to the date of payment.

Judgment delivered by: M.GAYAN-JAULIMSING, Ag President, Industrial Court

Judgment delivered on: 20<sup>th</sup> June 2023