

**Verma v SIT**

**2022 IND 23**

**CN533/15**

**THE INDUSTRIAL COURT OF MAURITIUS**  
**(Civil Side)**

**In the matter of:-**

**Vikram VERMA**

**Plaintiff**

**v/s**

**Sugar Investment Trust**

**Defendant**

**RULING (NO. 1) (IS THE PLAINTIFF SEEKING TO ADDUCE EVIDENCE OUTSIDE THE PROECIPE ?)**

The Plaintiff is claiming from the Defendant the sum of Rs4 352 719. 50/- with Interests at the legal rate as from the day of dismissal up to the date of final payment, with Costs, for his unjustified termination.

The Defendant has denied the said Claim in its Plea.

Each Party was assisted by Learned Counsel.

In the course of the Plaintiff's examination-in-chief, Learned Counsel for the Defendant objected to the Plaintiff adducing evidence as to whether following the Plaintiff's dismissal, other persons were employed immediately after or shortly after, as this had not been pleaded in the Proecipe.

The matter was therefore fixed for Arguments.

### **Case For The Defendant**

Learned Counsel for the Defendant submitted to the effect that the Plaintiff could not adduce evidence outside the Procipe, and referred to **The Supreme Court Rules 2000** and to the following Authorities in support of his Submissions:

- 1) **Gujadhur v Gujadhur** [\[1962 MR 49\]](#);
- 2) **Geerjanan v The Mauritius Commercial Bank Ltd** [\[2006 SCJ 320\]](#);
- 3) **Mauritius Commercial Bank Ltd v The Mauritius Union Assurance Company Limited** [\[2010 SCJ 97\]](#); and
- 4) **Modaykhan v SBM Bank (Mauritius) Ltd** [\[2017 SCJ 350\]](#).

Learned Counsel for the Defendant put in Written Submissions on behalf of the Defendant, as well as copies of **The Supreme Court Rules 2000** and of the abovementioned Authorities.

### **Case For The Plaintiff**

Learned Counsel for the Plaintiff started by submitting that before the Industrial Court, it was enough for the Plaintiff to state his case that his dismissal was unjustified, as the burden then shifts to the Defendant to establish that the dismissal was justified.

Learned Counsel for the Plaintiff in essence submitted that the Defendant knew fully the case it had to meet, given that the Plaintiff's case was that the reason given by the Defendant for the dismissal was false, completely unfounded, unjustified and lame excuses to get rid of the Plaintiff for ulterior motives.

Learned Counsel for the Plaintiff submitted that Learned Counsel for the Defendant was objecting to evidence being adduced to establish that the reason of reduction of workforce given was false and unfounded.

In support of his Submissions, Learned Counsel for the Plaintiff referred to, and put in copies of:

- 1) An extract of **Odgers' Principles Of Pleading And Practice, 21<sup>st</sup> Edition**;
- 2) **William v Wilcox [1838] 8 Ad and E 314**;
- 3) **Gujadhur (supra)**; and
- 4) **Omni Projects Ltd & Another v Dookee [2009 SCJ 74]**.

### **Analysis**

The Court has duly considered the Pleadings on Record, the Submissions of each Learned Counsel, the Written Submissions put in on behalf of the Defendant, and the Authorities, Rules, and extract of **Odgers' Principles Of Pleading And Practice, 21<sup>st</sup> Edition**.

The question to be determined at this stage of the Proceedings is whether the evidence the Plaintiff is seeking to adduce is outside the Procipe.

Now, the question which was put to the Plaintiff when the objection was taken, was in relation to what had happened after his termination, and that other persons had been employed.

The Court has duly considered the Procipe, and at paragraphs 2 and 3 of the Procipe, the Plaintiff is averring that his employment was terminated by the Defendant on 19-06-15 without any cause and/or justification, and that his dismissal was unjustified, and he was hence entitled to Severance Allowance at the punitive rate.

True it is that it would appear, on the face of it, that the Plaintiff is seeking to adduce evidence outside his Procipe.

It is trite Law, however, that Pleadings are not limited to the Procipe (see **Part II of the Supreme Court Rules 2000**).

The Court is therefore of the considered view that the Court cannot rely solely on the Procipe, but is to look at the Pleadings as a whole, to determine the present issue.

At answer A10.vi of the Answer to the Second Demand Of Further And Better Particulars, the following is spelt out:

The Defendant was planning to develop 58 Arpents of land at Belle Rive (acquired from (sic) State Land Development Company Ltd) for a mixed development. Following the termination, the Company recruited several staffs i.e; Project Manager, Compliance officer, Health and Safety, Chief Operating officer. (emphasis added)

The question of persons having been employed by the Defendant “following the termination” is therefore clearly set out in the Pleadings.

Interestingly, Learned Counsel for the Plaintiff stated that it was a question of strategy, and to take the Defendant by surprise.

Particulars are intended precisely for the Parties not to be taken by surprise, as set out in the Authority of **Rassool v François** [\[1914 MR 26\]](#):

4. The objects of particulars are to prevent surprise at the trial by informing the opposite party what the case is which he has to meet, to explain and limit pleadings which are vague or require limitation, and generally to define and narrow the issue to be tried and to save unnecessary expenses.

Be that as it may, although the evidence sought to be adduced by the Plaintiff has not been averred in the Proceipe, given the answer A10.vi of the Answer to Second Demand Of Further And Better Particulars as highlighted above, the Court is of the considered view that same has been averred in the Pleadings.

The Defendant cannot therefore be said to be taken by surprise.

Further, in light of all the above, and bearing in mind that “the cardinal principle remains that parties are bound by their pleadings” (**Mootanah v The Moka-Flacq District Council** [\[2005 SCJ 43\]](#)), the Court is of the considered view that the Plaintiff is not travelling outside his Pleadings.

## Conclusion

Without making any determination as to the Merits of the present matter, in light of all the above, and for all the reasons given above, the Court finds no merit to the objection raised by the Defendant, which objection is therefore overruled.

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

[Industrial Court]

[Date: 27 April 2022]