

*Talary C.R. v Gexim Land Consultants Ltd*

**2025 IND 48**

**Cause Number 177/2024**

**IN THE INDUSTRIAL COURT OF MAURITIUS**  
**(Civil side)**

**In the matter of:**

**Mr. Christopher Reynolds Talary**

**Plaintiff**

**v.**

**Gexim Land Consultants Ltd**

**Defendant**

**Judgment**

Plaintiff has given evidence in Court in line with the averments of his plaint in view of the fact that Defendant has left default on the trial day although it was duly summoned to appear. It is also worthy of note that Defendant did not file any plea.

The evidence led by the Plaintiff is to the following effect. He was in the continuous employment of Defendant since 29.3.2004 and was last employed as Measured Building Surveyor and Senior Land Survey Technician.

He was employed on a 5- day week basis. He was remunerated at monthly intervals at the rate of Rs 48,760 per month in 2019 which comprised of a basic salary of Rs 46,760 and a fixed travelling allowance of Rs 2,000. He was remunerated at the rate of Rs 49,060 per month in

2020 which comprised of a basic salary of Rs 47,060 and a fixed travelling allowance of Rs 2,000 (as per his salaries statement for the months of October 2019 to December 2019 namely Doc. P1).

Defendant had failed to remunerate him for work performed in the months of October, November, and December of the year 2019. He was paid a sum of Rs 13,716 on 20.12.2019 and Rs 35,337 on 17.1.2020. He was paid full wages for the months of January 2020 and February 2020. He was only paid Rs 12,500, Rs 25,000 and Rs 25,000 for the months of March 2020, April 2020 and May 2020 respectively.

Defendant had failed to remunerate him for work performed in the month of June 2020. On 2.7.2020, since Defendant had neither remunerated him for the month of June 2020 nor effected full payment for the months of October 2019, November 2019, December 2019, March 2020, April 2020 and May 2020, he has considered that Defendant has committed a breach of his contract which he construes as a termination of employment without notice and without any justification as from 2.7.2020.

Plaintiff has, therefore, claimed from Defendant the sum of Rs. 2,440,735.00 made up as follows: one month's wages as indemnity in lieu of notice: Rs 49,060 and severance allowance for 195 months' continuous service (Rs 49,060 x 3 x 195/12 years): Rs.2,391,675.00 with interest at the rate of 12% per annum on the amount of Severance Allowance payable from the date of termination of employment to the date of payment.

I have given due consideration to all the evidence put forward before me.

First and foremost, default judgments are governed by section 16 (1) of the District and Intermediate Courts (Civil Jurisdiction) Act pursuant to section 7(1) of the Industrial Court Act 1973.

Section 7(1) of the Industrial Court Act 1973 provides:

***"7. Institution and conduct of proceedings***

- (1) *Subject to the other provisions of this Act and to any specific procedural provisions in any enactment set out in the First Schedule, all proceedings before the Court shall be instituted and conducted in the same manner as proceedings in a civil or criminal matter, as the case may be, before a District Magistrate.*

Now, section 16 (1) of the District and Intermediate Courts (Civil Jurisdiction) Act provides -

*"Where on the day so fixed in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant does not appear, or does not sufficiently excuse his absence, the Court, upon proof of the service of the summons, may give judgment in terms of the plaint or, where the cause includes a claim for substantial damages, proceed to the hearing of the witnesses and trial of the cause on the part of the plaintiff only, and in either case, the judgment shall, subject to subsection (2), be as if both parties had attended."*(the above underlining is mine)

The Plaintiff deponed in a straightforward and convincing manner. His testimony is compatible with his salaries statement (Doc. P1) and has remained undisputed and unrebutted throughout. It is significant to note that pursuant to section 2 of the **Workers' Rights Act 2019**, an "agreement" means "*a contract of employment between an employer and a worker, whether oral, written, implied or express*".

Again, pursuant to section 2 of the same **Act 2019**, "earnings" in relation to a worker –

*"(a) means basic wages specified in any Remuneration Regulations or Wages Regulations or such wages paid by an employer; and*

*(b) includes –*

*(i) wages earned pursuant to sections 24,27(5), 30 and 40;*

*(ii) wages paid under sections 14,17,21,22,23,28,31,32,33,45,46,47,48,49,50,51,52(1), (4), (5) and (6) and 53;*

*(iii) any sum of money, by whatever name called, including commission and any productivity payment, paid to a worker, in respect of any work performed by him, in addition to the basic wages agreed upon between him and the employer; and*

*(iv) any payment made under any Remuneration Regulations or Wages Regulations in respect of extra work, public holidays, additional remuneration, leave taken or refunded, wages for replacing another worker drawing higher remuneration, or wages paid to a part-time or atypical worker, and any allowance paid under the Remuneration Regulations or Wages Regulations;*

By virtue of the same section 2 of the Act 2019 -

“*emoluments*” means “any payment in money or money’s worth which is salary, wages, leave pay, fee, overtime pay, perquisite, allowance, bonus, gratuity, commission or other reward or remuneration, by whatever name called, in respect of, or in relation to, the office or employment of a worker;

“*remuneration*”, subject to section 40(3)-

- (a) means all emoluments, in cash or in kind, earned by a worker under an agreement; and
- (b) includes-
  - (i) any sum paid by an employer to a worker to cover expenses incurred in relation to the special nature of his work;

“*employer*”, subject to sections 72,111 and 115 –

- (a) means a person who employs a worker and is responsible for the payment of remuneration to the worker;”

It is also relevant to note that under section 61(2) subsections (b) and (c) of the **Workers' Rights Act 2019**, the Plaintiff can also claim that his agreement has been terminated by Defendant when the latter fails to pay the remuneration due to him under the agreement and fails to provide work and to pay remuneration under an agreement.

Section 61(2) subsections (b) and (c) of the **Workers' Rights Act 2019** provide:

#### ***“61. Termination of agreement***

- (2) A worker may claim that his agreement has been terminated by his employer where –
  - (b) the employer fails to pay the remuneration due under the agreement;
  - (c) the employer fails to provide work and to pay remuneration under an agreement;”

Moreover, section 63 subsections (4) and (5) of the **Workers' Rights Act 2019** provide:

***"63. Notice of termination of agreement***

*(4) Notwithstanding any provision to the contrary in any agreement, the length of the notice to be given under subsection (1) shall not be less than 30 days.*

*(5) Any party may, in lieu of giving notice of termination of agreement, pay to the other party the amount of remuneration the worker would have earned had he remained in employment during the period of notice." (emphasis added)*

I find that the case for the Plaintiff, being soundly grounded both in law and on the facts (see - **Hurnam D. v. Bholah K. B. & Anor. [2009 SCJ 265]**), has been proved on a balance of probabilities.

For all the reasons given above, I give judgment in terms of the plaint (pursuant to section 16 (1) of the District and Intermediate Courts (Civil Jurisdiction) Act).

I order Defendant to pay to the Plaintiff the sum Rs. 2,440,735.00 representing one month's wages as indemnity in lieu of notice: Rs 49,060 and severance allowance for 195 months' continuous service (Rs 49,060 x 3 x 195/12 years): Rs.2,391,675.00 with interest at the rate of 12% per annum on the amount of Severance Allowance payable from the date of termination of employment to the date of payment.

**S.D. Bonomally (Mrs.) (Vice President)**

**26.06.25**

