

OSHI v D.L.B. Construction & Co Ltd

2022 IND 17

Cause Number 11/2021

**In the Industrial Court of Mauritius
(Criminal side)**

In the matter of:

OSHI

v.

D.L.B. Construction & Co Ltd

Judgment

Accused being an employer is charged under Regulations 4(1),14(a) and 60 of the Occupational Safety and Health (Safety of Scaffolds) Regulations 2013 (GN 16 of 2014) coupled with Section 44(2) of the Interpretation and General Clauses Act with unlawfully on or about 4 April 2019 causing a scaffold of approximately 9 metres in height to be erected at the rear side of a building under construction namely Block A “*Les Relais de la Mivoie, Phase 1*” at Avenue Colonel Dean, Grande Rivière Noire, without holding a permit or without enlisting the services of a scaffold contractor and with unlawfully on the same day failing to ensure that stairs or ladders are provided to enable persons to gain access from one level of a scaffold to another level to namely a scaffold in use at its place of work at the rear of the same building under construction.

The Accused represented by Mr. Jerry Gerard Benoit Romain pleaded guilty to Count I and not guilty to Count II to the information and was not assisted by Counsel.

The case for the Prosecution rested on the testimonies of Mr. Cheeranjeev Darshan Ray Moorooteea, the Occupational Safety and Health Officer, who was the enquiring officer and Mr. Rajiv Bawanypeck who was the site manager.

Witness no.1, Mr. Cheeranjeev Darshan Ray Moorooteea, in his capacity as Occupational Safety and Health Officer, gave evidence in Court. On 4 April 2019, he was posted at the construction unit of the Occupational Safety and Health Division. In that connection, he visited the construction site of accused company on that day as a routine inspection and he took 2 photographs as per Docs. A1 and A2.

In the course of his inspection, he took cognizance of a scaffold of approximately 9 metres high which was erected at the rear side of Block A by the Accused meaning the employer without holding a scaffold contractor's permit as per Doc. A1. Moreover, no stairs nor ladders were provided for that scaffold for workers to gain access from one level of the scaffold to another. As per Doc. A2, that photograph was showing 3 employees of Accused climbing down the scaffold on the first level of the scaffold to the ground level without using stairs or ladders as they were not provided. He maintained that the scaffold was not in a dismantling stage during his site visit.

Thereafter, he sent a letter dated 22 April 2019 viz. Doc. B to the Director of accused company requesting him to call at the office of that unit on 3 May 2019 in relation to the above two Counts. He received a letter dated 16 July 2019 from him in response as per Doc. D wherein he had already delegated Mr. Randhirsingh Soomoodra for a meeting of 14 May 2019. On the latter date, he recorded a statement from Mr. R. Soomoodra in his capacity as Human Resource Manager under warning. The said representative of Accused gave his statement voluntarily, he signed and he also signed as witness and which he read out and produced in Court as per Doc. C.

Witness no.3, Mr. Rajiv Bawanypeck, in his capacity as site manager, gave evidence in Court. On 4 April 2019, he was working on the construction site at "Les Relais de la Mivoie, Phase 1" at Avenue Colonel Dean, Grande Rivière Noire. He

confirmed that as per Doc. A2 at Block A, the workers were completing the fixing of a door at the first floor and there was a scaffold where those workers stood to perform their work. Doc. A2 showed where they were going up and down the scaffold. The latter was dismantled on the same day after the work was completed.

The Accused representative, Mr. Jerry Gerard Benoit Romain, did not give evidence under oath but simply made a statement from the dock. As regards the first Count, he said he pleaded guilty as it was genuine. But as regards the second charge, he said that there was a completion of work and a dismantling exercise being done at the same time on the material day which explained the absence of stairs or a ladder giving access to the scaffold.

I have given due consideration to all the evidence put forward before me. At this stage, I find it appropriate to reproduce Regulations 4(1), 14(a) and 60 of the **Occupational Safety and Health (Safety of Scaffolds) Regulations 2013 (GN 16 of 2014)** below:

“4. Construction by scaffold contractor

- (1) *Any employer shall not cause a scaffold, except an excluded scaffold, to be constructed, erected, installed, re-positioned, altered, maintained, repaired or dismantled unless he -*
 - (a) *holds a permit; or*
 - (b) *enlists the services of a scaffold contractor.*

14. Stairs and ladders

Every employer shall ensure that stairs or ladders are –

- (a) *provided to enable persons to gain access from one level of a scaffold to another level, and*

60. Offences

Any person who contravenes or knowingly gives false or misleading information or fails to comply with these regulations shall commit an offence.”

As regards Count I, the Accused has pleaded guilty.

Now, as regards Count II, it is common ground that on the material day, there were neither stairs nor ladders to have access to the scaffold at the rear side of the building under construction meaning Block A “*Les Relais de la Mivoie, Phase 1*” at

Avenue Colonel Dean, Grande Rivière Noire where the work was not completed yet although the dismantling of that scaffold was done on the same day.

However, the testimonies of both Prosecution witnesses viz. Witness nos.1 & 3 remained unrebutted that at the material time while the employees were still working on the building and going up and down the scaffold from one level to another to perform their work, there were neither stairs nor ladders and the dismantling was not done yet. Indeed, such fact was further confirmed by the real evidence namely the photograph taken as per Doc. A2 by the enquiring officer viz. Witness no.1 on that day.

Thus, I believe the sworn versions of the Prosecution witnesses which stood the test of cross-examination and which are in line with the real evidence namely the photograph viz. Doc. A2 rather than the unsworn version of the Accused's representative meaning the employer's representative from the dock let alone that it is opposed to the unsworn statement given by its other representative after having been duly cautioned namely Doc. C.

For all the reasons given above and in view of Accused's guilty plea as regards the first Count which is also compatible with Doc. A1, I find that the case for the Prosecution has been proved beyond reasonable doubt. I, accordingly find the accused company guilty as charged on both Counts of the information.

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

22.3.22

