Teelock M. v Syndel Property Management Ltd

2024 IND 10

Cause Number 507/18

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Mr. Mohunraj Teelock

Plaintiff

v.

Syndel Property Management Ltd

Defendant

Judgment

In this amended plaint hereinafter referred to as "plaint", Plaintiff has averred the following –

(a) (i) he was in the continuous employment of Syndic & Building Management Services Ltd as part-time Watchperson since August 2012;

(ii) as from April 2015, he was employed by Defendant under the same terms and conditions of employment with continuity of service;

(b) he was employed on a 4-day week basis at Domaine de L'Intendance;

(c) he was last remunerated at monthly intervals at the rate of Rs 500 a day;

(d) on 12.02.17, when he reported to work at Domaine de L'Intendance, he found another watchperson, one Mr. Seeruttun, on site and the latter told him that he had received instructions from one Jean Marc Sevathean, Supervisor, to attend work on this site;

(e) he tried to contact Mr. J.M. Sevathean on his mobile on that day but the latter did not take his calls;

(f) on 13.02.17, he again phoned Mr. J.M. Sevathean and the latter told him that his services would no longer be required at Domaine de L'Intendance;

(g) on the same day, i.e. 13.02.17, he filed a complaint of summary termination of employment at the Labour Office;

(h) when contacted by the Labour Office, Mr. J.M. Sevathean stated that he would be provided work as per their agreement;

(i) on 14.02.17, when he reported to work, he found Mr. Seeruttun still in post there;

Plaintiff has, thus, claimed that his employment has been allegedly terminated by Defendant without notice and without any valid reason as from 14.02.17. He has, therefore, claimed from Defendant the sum of Rs.135,200.00 comprising of one month's wages as indemnity in lieu of notice, severance allowance for 53 months continuous employment and a refund of 13 days' outstanding annual leave for years 2016 and 2017 respectively.

Defendant, on the other hand, in its amended plea, has denied liability and has averred that it never had any agreement whatsoever with Plaintiff and is not indebted to him in the sum claimed or in any other sum whatsoever.

Plaintiff gave evidence in Court. Mr. Steeven Guillaume was Director of both Syndic & Building Management Services Ltd hereinafter referred to as "first company" and Defendant company.

However, Plaintiff was employed by Mr. S. Guillaume in his capacity as Director of the first company as part time watchperson since August 2012 at its place of work at Domaine de L'Intendance. The latter was a residential building consisting of apartments belonging to the co-owners of the building and who grouped together forming a *"Syndicat"* of Co-owners namely "SYNDICAT DES COPROPRIETAIRES

DU DOMAINE DE L'INTENDANCE" hereinafter referred to as *"Syndicat"*. He was paid his salary at monthly intervals by way of cheque under the name Head of *"Syndicat"* as per Doc. P1 showing that it was signed by him and Mr. S. Guillaume for the first company and which he collected from the said Mr. S. Guillaume. His most recent basic salary was Rs.500 per day. However, for the years 2015 and onwards, Doc. P2 shows that Plaintiff's monthly salary by way of cheque made no room for signatures although it bore the same name Head of *"Syndicat"*.

Plaintiff was instructed to work by Mr. S. Guillaume or his Supervisor when he was busy. Since August 2012, Mr. S. Guillaume was giving Plaintiff instructions to work as per a roster which bore his signature but which Plaintiff did not have a copy to produce in Court.

Defendant only gave Plaintiff verbal instructions for the work to be carried out by him. At no point, Mr. Guillaume informed him through phone that he had to discontinue working. It was only after his contract of employment was terminated and in the year 2018 when he lodged his plaint that he learnt about the existence of Defendant company.

The latter acted as *"Syndic"* of the building. Plaintiff then started working for Defendant as from the year 2015 under the same conditions at the same place of work which was Domaine de L'Intendance. Then, he admitted that he did not know whether it was in 2015 exactly although it was averred in his plaint. When the question was put to him that it was Defendant's contention that it was not the Defendant company that employed him, he replied that he had it in writing because when payment was made, he signed as well as the representative of Defendant company. He further admitted that he was not aware of his terms of employment with Defendant. Although he did not read Defendant's contract with Domaine de L'Intendance, he observed that Defendant was responsible for security among others.

On 12.2.2017, he went to work according to his roster and reaching the place of work, he saw Mr. Seeruttun working in his place and whom he knew before and who was also a part-time watchman. He told him that it was his day to work and asked him who was the one who had asked him to come and work and he replied that it was Mr. Sevathean, the Supervisor of Mr. S. Guillaume. He immediately phoned Mr. Sevathean who did not respond. He phoned him again on the following day in the morning telling him that Mr. Seeruttun was working in his place, as it was the day he

was supposed to work. He replied that Plaintiff's services were no longer needed and that he was interfering with their work and that his services were not needed.

He turned up for work on the following day and he saw Mr. Sevathean on site as well as Mr. Seeruttun. Mr. Sevathean asked Plaintiff to continue to work. Plaintiff considered that he was unjustly dismissed as Mr. Seeruttun was there working. He did not get any prior notice and he claimed the sum of Rs. 135,200 from Defendant as per the breakdown given in his plaint. He was also claiming from Defendant the sum of Rs.558 as travelling expenses to attend Court for 9 days.

Mr. Didier Marie Gerard Guy Vanee, an expert Accountant, gave evidence in Court. He was the owner of an apartment of Domaine de L'Intendance. He occupied the post of member of the *"Syndicat"* and then in the period 2016-2020, he became President of the *"Syndicat"*.

There was a *"Syndic"* Contract with Defendant which included the maintenance of the building including a system of watchmen among others. It was the *"Syndic"* represented by Defendant which brought its workers and prepared its payment cheques which were signed by the Defendant represented by Mr. S. Guillaume. As per Docs. P1 and P2, he could not say why there was a different heading and not that of Defendant as he was not concerned with recruitment of workers or their dismissal. The Defendant was concerned only with the signature of the cheques. When there was dissatisfaction with a watchman, for example, it was reported to the *"Syndic"* represented by Mr. S. Guillaume. The payment of Plaintiff's remuneration emanated from the funds of the *"Syndicat"* and was an expense of the *"Syndicat"*. He conceded that the expenses of Defendant could not emanate from the *"Syndicat"*. He had no document in his possession certifying that Defendant was in charge of the recruitment of Plaintiff. He did not come across of any document showing that Plaintiff's contract of employment was terminated by Defendant. He could not say whether the Plaintiff was employed by Defendant.

The case for the Defendant unfolded as follows.

Miss. Bibi Nadia Ismael in her capacity as Administrative Secretary of Defendant gave evidence in Court. She had been occupying that post for seven years. Defendant was recruited by Domaine de L'Intendance as a service provider to manage the property. When Defendant was recruited, the *"Syndicat"* already had its own workers. The Plaintiff was already working as watchman for that building prior to

the contract being made by the said *"Syndicat"* with Defendant and Plaintiff was not the watchman emanating from Defendant company. The latter was only concerned with the dispatch of salaries for the *"Syndicat"* through either the Site Supervisor or the Director viz. Mr. S. Guillaume and at no time Defendant paid the salaries of the workers of the *"Syndicat"*.

I have given due consideration to all the evidence put forward before me and the submissions of learned Counsel for Defendant.

I find it appropriate, at this stage, to reproduce Section 2(a) of the Employment Rights Act 2008 in force then, as to the meaning to be ascribed to an *"employer",* subject to section 33 (which finds no application in the present case) and which reads as follows:

"means a person who employs a worker and is responsible for the payment of remuneration to the worker."

In the present case, the testimony of the only witness for the Defendant remained unrebutted that Plaintiff was already working as watchman for the *"Syndicat"* prior to the said *"Syndicat"* having entered into a contract with Defendant which had its own workers. Her testimony also remained unshaken to the effect that Plaintiff's salary was paid by the *"Syndicat"* but only signed for dispatch by Defendant which is in line with the unchallenged testimony of the witness for the Plaintiff namely Mr. Vanee who was a co-owner of Domaine de L'Intendance.

Moreover, the salary documents produced viz. Docs. P1 and P2 show no signatures for payment of salary by way of cheque from Defendant's funds to Plaintiff irrespective of the fact that Mr. Guillaume was the Director of both the first company and that of Defendant. This fact is further fortified by Plaintiff's admission that he did not even know about his terms of employment with Defendant.

It is of paramount importance to note that Plaintiff conceded that he was appointed by Mr. S. Guillaume in the first company and that it was the said Mr. Guillaume who made a roster according to which he was given instructions to work.

Therefore, on the material day namely on 12.2.2017, when Plaintiff could not reach Mr. Sevathean over the phone, he should have called Mr. Guillaume as he was the one responsible for both his daily instructions to work by way of roster and

recruitment and who more importantly at no time had asked him to discontinue working.

It is significant to note that at no time, Plaintiff deposed to the effect that he had been dealing with Mr. Sevathean precisely because he was the Supervisor of Mr. S. Guillaume when the latter was unavailable prior to the material day namely the 12.2.2017. Plaintiff conceded that on 13.2.2017, Mr. Sevathean told him that he was interfering with their work meaning the work of Defendant in relation to Mr. Seeruttun, another watchman, at the same place of work and that following which, subsequently, he did ask Plaintiff to continue working although Mr. Seeruttun was present.

Therefore, it is abundantly clear that it was Mr. Seeruttun and not the Plaintiff who was the employee of Defendant as Plaintiff was paid his salary by the *"Syndicat"* but instructed to work by Mr. Guillaume as per a roster prepared by Mr. Guillaume in his capacity as representative of the first company although his salary cheques were signed by Mr. Guillaume as representative of Defendant for the purposes of dispatch only.

True it is that Mr. Guillaume was the Director of both companies. But he signed the payment document for Plaintiff's monthly salary for the *"Syndicat"* in his capacity as representative of the first company (see- Doc. P1). As from the year 2015 and onwards, there is no documentary evidence to show that Mr. Guillaume did so in his capacity as representative of Defendant company as per Doc. P2. This state of affairs lends support to the fact that the first company did not change its name to the Defendant company.

Thus, it is clear enough that both the first company and Defendant were service providers giving some common services to the co-owners of the building namely the said *"Syndicat"* like watchmen among others.

Therefore, it stands to reason that both the first and Defendant companies provided their team of workers through their representatives namely Mr. Guillaume who was responsible for the roster of the watchmen and the instructions to be given to them including the Plaintiff as to the work to be carried out by Plaintiff for the first company (but Plaintiff was paid by the *"Syndicat")* and for the dispatch of the salaries to both companies' employees.

The question that the Court has to decide is whether there is a contract of employment between Plaintiff and Defendant.

Indeed, in the Supreme Court case of **Morris J** v **Merville Beach Hotel & Ors** [2009 SCJ 414], emphasis was laid on the French Doctrine as regards the cumulatively main three elements for a contract of employment to operate at **para. 21 Critères Cumulatifs, Rép. trav. Dalloz, avril 2005** as follows:

"L'existence du contrat de travail suppose normalement la réunion de trois critères: d'une part, l'exécution d'une prestation de travail, d'autre part, le versement au travailleur concerné d'une remuneration en contrepartie de l'accomplissement de cette prestation, et, enfin, la subordination juridique de ce travailleur au donneur d'ouvrage qui est, en principe, le bénéficiare de cette même prestation de travail ….

….Compte tenu du caractère cumulative de ces critères, l'absence de l'un d'entre eux(tel que la rémunération) devrait normalement conduire à dénier à la relation contractuelle ou factuelle litigieuse la qualification de contrat de travail…." (**emphasis added)**

None of the criteria propounded in **Morris**(supra) has been successfully established in the present case for the Court to infer that Plaintiff had entered into a contract of employment with Defendant as watchman as from the year 2015 for the following reasons: -

1. In relation to the Defendant, the pay documents do not show that as from the year 2015, Mr. Guillaume had signed them other than for the purposes of dispatch only viz. Doc. P2 unlike Doc. P1 wherein it is clear that he signed the pay documents prior to 2015 for the first company.

2. Mr. Guillaume was the one responsible for giving instructions to work and to prepare a roster for that purpose to Plaintiff in relation to the first company wherein Plaintiff was employed.

3. Thus, the inescapable inference is that Plaintiff was jointly employed by both the *"Syndicat"* being responsible for payment of his remuneration and the first company which was responsible for giving him instructions as to the work to be done by him through its Director, Mr. Guillaume. As clearly pointed out in **Morris** (supra):

"[22] In a situation where the one pays the piper and some other calls the tune, it is the latter who becomes the employer by the rule of "lien de subordination juridique":

"Cela étant précise, de ces trois critères de qualification, celui relative au lien de subordination juridique apparait preponderant, voire décisive, dès lors qu'il correspond à l'autorité inhérente à la qualité d'employeur et qu'il constitue, de ce fait, un élément de distinction fondamental avec d'autres contrats ou concepts voisins." (…)

[23] The result of the application of the cumulative criteria in our employment law in appropriate cases has led to the development of the concept of joint employers." (**emphasis added**)

4. Thus, it can be inferred that Plaintiff was employed by both the *"Syndicat"* (which paid to Plaintiff his monthly salaries) and the first company (which gave instructions to Plaintiff as to the nature of the work to be carried out by him on a daily basis according to a roster, because of this *"lien de subordination juridique").*

The *"lien de subordination juridique"* cannot be stretched in relation to the Defendant company as:

(a) Plaintiff admitted that he was unaware of the Defendant company, his terms of employment with it and whether he was employed by it for sure in 2015 as he got to know of its existence only after according to him he was unfairly dismissed in the year 2018.

(b) It remained unrebutted by both the Plaintiff's and Defendant's witnesses that Plaintiff was already a worker of the *"Syndicat"* and not that of Defendant at the time the Defendant entered into a contract of service with the *"Syndicat"*, because Defendant had its own workers paid by the said Defendant and that at no time paid the Plaintiff's salaries. At most a pay document could have been signed by the Defendant's Director, Mr. Guillaume, for the purposes of dispatch of salaries only (as he was the Director of both the first and Defendant companies) so that it is plain enough that there were two companies and not the first one changed to the name of Defendant and Plaintiff was a worker for both the *"Syndicat"* and the first company.

(c) There is no evidence adduced in order to establish that Mr. Guillaume and Mr. Sevathean gave instructions to Plaintiff as regards the work to be carried out by him in relation to the Defendant company in line with a roster prepared by Mr. Guillaume. Hence, under the authority of **Morris** (supra), it cannot be invoked that Plaintiff was employed by Defendant as there is no *"lien de subordination juridique"* between the Defendant and Plaintiff in order to infer that the *"Syndicat"* and the Defendant were joint employers of Plaintiff.

For all the reasons given above, I am unable to find that the case for the Plaintiff has been established on a balance of probabilities. The amended plaint is accordingly dismissed. No costs.

S.D. Bonomally (Mrs.) *(Vice President)*
30.4.24