DILMOHAMED N. A. v ARICENT TECHNOLOGIES MAURITIUS LTD

2023 SCJ 419

Record No. 7084

THE SUPREME COURT OF MAURITIUS

In the matter of:-

Noor Ahmad Dilmohamed

Appellant

v

Aricent Technologies Mauritius Ltd

Respondent

JUDGMENT

This is an appeal from the judgment of the then President of the Industrial Court dismissing a claim brought by the appellant, then plaintiff, against his former employer ("ATML"), the respondent, then defendant, for unjustified termination of employment. She found that the termination of the appellant's employment was justified on ground of redundancy, being satisfied that ATML had proved on a balance of probabilities that the post of Senior Manager, Finance that was occupied by the appellant was no more required by it in the context of the global reorganisation of Aricent Group of which ATML was a subsidiary.

The Notice of Appeal initially contained nineteen grounds of appeal, three of which (Grounds 3, 11 and 13) are no longer being pressed. While it was not open to either party to unilaterally decide to group together various grounds (see **Avigo Capital Managers PVT Ltd v Avigo Venture Investments Limited (In Liquidation)** [2019 SCJ 158] and **Jaria & Anor v Ya'Taiba Co Ltd** [2022 SCJ 185]), we agree with learned Counsel for the respondent that there was considerable overlap among some of the remaining grounds.

We shall first address together Grounds 4, 6, 7, 8, 9, 10, 14, 15, 16, 17 and 18, which, in substance, all relate to the restructuring of the Aricent Group, the alleged profitability of ATML and its position within the Aricent Group and which we do not need to reproduce. We shall then deal with the remaining grounds.

Grounds 4, 6, 7, 8, 9, 10, 14, 15, 16, 17 and 18

It was the case for the appellant before the Industrial Court that he was summarily dismissed by the respondent on 31 October 2014.

The respondent had in its plea averred that it forms part of the Aricent Group which had, *"in an attempt to salvage the financial difficulties which (it) faced"*, taken a number of decisions, including the closing down of offices in South Africa and Ukraine, the laying off of workers in India and the United States, the substantial reduction of workforce in China as well as the abolition of the post occupied by the plaintiff. The respondent went on to aver that, as a result of the substantial financial difficulties faced by it, it had no other alternative than to restructure its affairs and to make the appellant's post redundant. In the respondent's submission it was therefore justified for it to terminate the contract of the appellant.

The thrust of the arguments of learned Counsel for the appellant questioned whether the lower Court was *"right in deciding that the interests of Aricent Group should determine the policy of respondent which is a local company incorporated under the laws of Mauritius"* and, more pertinently, whether the learned Magistrate was right *"to consider the interests of the Aricent Group"* in concluding that the dismissal was justified.

Now it is clear from the appellant's letter of appointment dated 15 July 2009 (**Doc M**) that he was employed by ATML. It is equally clear that ATML, a private limited liability company incorporated in Mauritius and holding a Category 1 Global Business licence, forms part of the Aricent Group which has business operations in various countries. Indeed the letter of appointment itself refers to the employer, ATML, being *"an Aricent company"*.

The letter of termination of the appellant's employment (**Doc H**), which is signed by one Eric D. Buhrfeind, "Chief People Officer – Aricent & Director", refers to the *"financial turbulence"* experienced by the Aricent Group over the preceding

years, which had led it to rework on its global strategy and to refocus and restructure its operations. It then refers to the restructuring and closing down of several Aricent offices and laying off of employees in other countries before stating that, in Mauritius, ATML had decided to re-structure and re-organise its operational activities such that the appellant's position as Senior Manager and Financial Controller in Mauritius would no longer exist as at 31 October 2014. It is also worth noting that the letter mentions that the appellant's duties pertaining to the financial aspect of the Company would be absorbed partly by the Indian team and partly by the US team while his administrative duties would be absorbed by the local directors.

Further it is clear from the evidence of Mr Sachin Luchmun, who deposed at the trial as Director and representative of ATML, that Mr Buhrfeind was during the year ending 31 March 2014 a Director of ATML.

The issue here is not whether ATML, or the Aricent Group, was the employer of the appellant but rather whether ATML, as employer at all material times, was entitled to rely on the financial difficulties faced by the Group to declare the appellant redundant.

The short answer is, in our view, to be found in the letter of termination itself. Although reference is made to the *"financial turbulence"* faced by the Group and its global strategy to refocus and restructure its operations, it is ATML which has decided to restructure and re-organise its operational activities such that the appellant's position would no longer exist as at 31 October 2014. We consider that there is nothing sinister with the employer's decision flowing from financial difficulties being faced by the Group to which it belongs, the more so since there was evidence on record to the effect that ATML, as a wholly owned subsidiary, depended on its parent company, which injected capital and made loans to ATML, in order to run its operations. Indeed, as the letter of termination makes clear, the financial difficulties faced by the Group had led to laying off of employees in various other countries.

We note in that regard that both French and English case-law support the finding of the trial Court and the submission of learned Counsel for the respondent that it was proper for the employer organisation to take into account the group structure to which it belonged and any change brought within the group for the purpose of upholding its efficiency and competitiveness (see the decision of the *Cour de Cassation, Chambre Sociale, 5 avril 1995, no 93-42.690* (*décision dite* "*Thomson*

Videocolor" and that of the English National Industrial Relations Court in **Vokes Ltd v Bear [1973] IRLR 363**).

It is not disputed that the applicable law at the time of the termination of the appellant's employment on 31 October 2014 was the **Employment Rights Act 2008, section 46(5)(d)** of which read as follows –

> ***"46. Payment of severance allowance***
>
> *(5) Where a worker has been in continuous employment for a period of not less than 12 months with an employer, the Court may, where it finds that –*
>
> *(…)*
>
> *(d) the grounds for the termination of agreement of a worker for economic, technological, structural or similar nature affecting the enterprise, do not constitute valid reasons;*
>
> *order that the worker be paid severance allowance as follows –*
>
> *(i) for every period of 12 months of continuous employment, a sum equivalent to 3 months' remuneration; and*
>
> *(ii) for any additional period of less than 12 months, a sum equal to one twelfth of the sum calculated under subparagraph (i) multiplied by the number of months during which the worker has been in continuous employment of the employer."*

It is clear from the lower Court's analysis of the evidence on record that it came to the conclusion that the decision of ATML to terminate the appellant's employment as a result of him being made redundant in the context of the restructuring of the company was justified on economic grounds affecting the enterprise and constituted valid reasons for the purposes of **section 46(5)(d) of the Employment Rights Act 2008**.

We find no reason to interfere with this finding of the lower Court, which we accordingly uphold. Grounds 4, 6, 7, 8, 9, 10, 14, 15, 16, 17 and 18 are therefore dismissed.

Remaining Grounds

In the light of our above decision with regard to the lower Court's finding that the appellant's dismissal was justified and in the light of **section 46(5)(d) of the Employment Rights Act 2008**, the question of payment of severance allowance to the appellant (referred to in Grounds 1 and 19) does not arise. We may also summarily set aside Ground 2, which contends that the learned Magistrate had failed to realise that the dismissal had taken place at the eleventh hour and on the last day of October 2014, since the timing of the termination is of no relevance if the termination can be justified on valid economic grounds. Likewise Ground 12 which refers to the learned Magistrate's alleged conclusion as to *"the fact of informing the Respondent of the desire to make him redundant"* is quite simply vague and misconceived. As for Ground 5, which states that the failure of the learned Magistrate to *"realise"* that the string of correspondence between the parties shows that the respondent meant, *inter alia*, to *"get rid"* of the appellant, it has not been substantiated; as the learned Magistrate rightly noted, the evidence on record, if anything, shows that the appellant was made aware of the restructuring exercise contemplated by the Group since mid-September 2014 and was offered different options, including that of submitting his resignation in exchange for compensation.

In the light of the above, we find no merit in any of the grounds of appeal and dismiss the appeal. With costs.

A.D. Narain
Judge

N. F. Oh San-Bellepeau
Judge

11 October 2023

Judgment delivered by Hon. A.D. Narain, Judge

For Appellant	**:**	**Mr G. Ramdoyal, Attorney at Law** **Mr J. Tsang Mang Kin together with** **Mr A. Roopun, of Counsel**
For Respondent	**:**	**Mrs F. Maudarbocus Moolna, SA** **Mrs U. Boolell, SC together with** **Mr N. Boolell, of Counsel**