BISASUR G. v THE INDEPENDENT COMMISSION AGAINST CORRUPTION

2014 SCJ 189

Record No. 94061

THE SUPREME COURT OF MAURITIUS

In the matter of:

Gerard Bisasur

Plaintiff

v.

The Independent Commission Against Corruption

Defendant

In the presence of:

The Honourable Attorney General
Co-Defendant and Party in Presence

JUDGMENT

The facts of the present case are undisputed and they are as follows. The plaintiff is an attorney at law. By letter dated 16 May 2002, he was offered appointment Deputy Commissioner of the Independent Commission Against Corruption as from 1 June 2002 for a fixed duration of 10 years. His appointment was made under section 18 of the Prevention of Corruption Act 2002 (POCA 2002). Following amendments brought to POCA 2002 by Act No. 24 of 2005, the Prevention of Corruption (Amendment) Act (POCA 2005) which came into force on 1 October 2005, the post of Deputy Commissioner was abolished.

The plaintiff is now claiming from the defendant damages which he said he has suffered as a result of the *"unilateral decision of the defendant to bring to a premature, arbitrary, unjustified and unlawful end his contract of employment and to fix the amount of compensation payable to him"*.

The defendant has in its plea denied being liable to the plaintiff.

Two issues were identified for the Court's determination. Was there a contract of employment between the plaintiff and the defendant? If the answer is in the affirmative, was the defendant in breach of the plaintiff's contract of employment.

I must pause here to recite the turn of events which would explain the presence of the Honourable Attorney-General in the present case which was initially entered against the defendant only. After the usual exchange of pleadings between the plaintiff and the defendant, latter filed a plea containing a plea *in limine litis* to the effect that (i) the plaint did not disclose any cause of action against it and (ii) a necessary party had not been put into cause. The matter was then fixed for argument. However, before any argument was offered, the plaintiff amended his plaint by putting into cause the *"Honourable Attorney-General"* as a co-defendant. The defendant then filed an amended plea in which it reiterated the first limb of the plea *in limine litis* raised in its original plea and dropped the second limb. A plea containing a three pronged objection *in limine litis* was also filed on behalf of the co-defendant and it is to the effect that the plaint discloses no cause of action; it is not in compliance with the Supreme Court (Constitutional Relief) Rules; and it is time-barred.

Arguments were offered in respect of the plea *in limine* raised by the defendant and the co-defendant. On 22 November 2011, in an interlocutory judgment, I set aside the defendant's plea *in limine litis* on the ground that it had been prematurely raised. With regard to the co-defendant's presence in the case, on the basis of the arguments offered on behalf of the parties, I concluded in favour of the plaintiff's argument that the presence of the Honourable Attorney-General was warranted.

I shall now turn to the first issue raised in the present case.

Was there a contract of employment between the plaintiff and the defendant?

In his submissions, learned Counsel for the plaintiff argued that as the three essential elements which characterize a contract of employment, namely *"la prestation du travail, la rémunération"* and *"le lien de subordination"*, as laid down in French law followed in **The Caledonian Insurance v M.I. Mowlah [1970 SCJ 3]** and **Morris J. v Merville Beach Hotel & Ors [2009 MR 420]**, have been satisfied, therefore a relationship of employer and employee has been established between the defendant and the plaintiff.

In reply, learned Counsel for the defendant argued that there was no contract of employment between the plaintiff and the defendant inasmuch as:-

(i) the defendant had no say in the selection, recruitment and appointment of the plaintiff which was done by the Appointments Committee under section 18 of POCA 2002 and not by the defendant in accordance with section 24 of POCA 2002;

(ii) the defendant did not determine the terms and conditions of the plaintiff's employment;

(iii) according to the plaintiff's letter of appointment the defendant was not a party to the contract;

(iv) the defendant did not monitor or had the power to control the execution of the plaintiff's work;

(v) that plaintiff did not work under the defendant's authority and did not receive any orders and directives from it;

(vi) the payment of remuneration to the plaintiff does not necessarily imply that the defendant was the plaintiff's employer; and

(vii) the defendant had no power to take or recommend disciplinary action or exercise any power of dismissal against the plaintiff.

Learned Counsel has, in support of his submissions, referred to **Camerlynck 2nd Edition, Droit du Travail; The United Bus Service Ltd v Gokhool [1978 MR 1], Raman**

Ismael v United Bus Service [1986 MR 182], and **The Local Government Service Commission v P. Bancilhon [2003 MR 225]**.

Under the French doctrine, the contract of employment is a *"convention par laquelle une personne s'engage à mettre son activité à la disposition d'une autre, sous la subordination de laquelle elle se place, moyennant une rémunération"* (*vide* paragraph 43, page 52 of Camerlynck 2nd Edition, Droit du Travail).

The three constitutive elements for identifying a contract of employment are therefore:-

«1° la prestation de travail;
2° la rémunération;
3° la subordination juridique.»

Whilst the question of identifying the correct employer may not be free from difficulties, this Court has consistently followed and applied the French doctrine and jurisprudence which have laid down that it is the *"lien de subordination"* which is the decisive criterion in identifying who is the employer as illustrated in the cases of **The Caledonian Insurance (supra), Bancilhon (supra), M.S. Moos & Anor v Sun Resorts Ltd. [2007 SCJ 261]**, and **Morris J. (supra).**

The Court in **The Caledonian Insurance (supra)** after quoting notes 23 and 24 from Dalloz Nouveau Répertoire vo. Louage d'ouvrage et d'industrie and note 19 from Dalloz Encyclopédie Civile vo. Contrat de Travail which read:-

> *«23. Cette subordination du locateur de services au maître ou patron est un des traits essentiels du contrat de louage de services et le distingue du contrat de louage d'industrie ou d'entreprise, réglé par les art. 1787 et s. C. civ.; dans ce dernier contrat, l'entrepreneur fait le travail sans aucune direction ni surveillance du maître et il le lui remet une fois terminé; dans le premier, au contraire, le maître a la direction et la surveillance du travail (Trib. com. Saint-Étienne, 23 mars 1905, D.P. 1905. 5. 30. – Comp. Req. 27 janv. 1851, D.P. 51. 1. 166; Paris, 31 oct. 1893, D.P. 94. 2. 313. – PIC, nos 873 et 873 bis; BAUDRY-LACANTINERIE ET WAHL, t. 2, nos 1641, 1881 et 3865 et s).*

> *24. Il y a donc louage de services lorsqu'un ouvrier travaille sous la direction d'un patron, si important que soit le travail; et, inversement, il y a louage d'industrie et l'ouvrier devient entrepreneur, dès qu'il travaille pour son compte, d'une façon indépendante, si minime et de si peu de valeur que soit le travail (Trib. paix Paris, 2 déc. 1909, D.P. 1910. 5. 5. – BAUDRY-LACANTINERIE ET WAHL, loc. cit).*
>
> *19. Le salarié serait placé sous l'autorité de l'employeur qui aurait le droit de lui donner des ordres pour l'exécution du travail, de surveiller leur accomplissement, et de réprimer par des sanctions les fautes disciplinaires. Il faudrait ce lien de subordination juridique pour que le contrat puisse être qualifié contrat de louage de service.»*

held that *"it is settled law that in order to constitute the relation of employer and employee there must be a "subordination juridique" between them without which there cannot be a "louage de service"*.

In **Moos (supra)**, the Court after commenting on the various tests laid down by the English Courts in **Stevenson, Jordan and Harrison Ltd. v Madonald and Evans [1952 1 T.L.R. 101]** and **Ready Mixed Concrete (S.E.) Ltd. v Minister of Pensions [1968 2 QB 497]** had the following to say: *"Under the French law, the distinguishing element between the "contrat de travail" and the "contrat d'entreprise" is the element of subordination."* The Court went on to add that although *"the question whether the work done is an integral part of the business or merely accessory to it is a relevant consideration*, *but the element of control and subordination is the real distinction"* in determining the issue of the relationship of employer and employee.

In **Morris J. (supra)**, the Court took the view that *"In the modern employment law, the concept of employee-employer relationship has evolved away from the traditional binary and personal nature where it started originally, ...this has led to the development of other criteria than the conventional "he who pays the piper calls the tune!"* The Court also took the view that *"the mere fact of who pays the wages or salaries is not enough. In appropriate cases, cumulative criteria are applied to find out who is legally the employer of a party. It is not in all cases that an employer is he who pays the wages or the salary."*

The Court in **Morris J. (supra)** then referred to the case of **Bancilhon (supra)** in which case the Appellate Court found that the trial Court was wrong to rely *"solely on one of the elements normally making up the relationship of employer-employee, namely the remuneration aspect"* and that *"since no single test is conclusive, it is the duty of the trial court to look at all the elements to see whether that specific relationship has been established. The weight to be given to each element will depend on the facts and circumstances of each individual case (vide* ***Warner Holidays Ltd v Secretary of State for Social Services [1983 IRC 440]****)"* and *"other relevant factors like the nature of the enterprise, the right of control, the existing appointment and dismissal mechanism"*.

I find also relevant the views expressed by Mummery J. in **Hall (Inspector of Taxes) v Lorimer [1994] 1 W.L.R. at page 216** with which Nolan L.J. in the Court of Appeal agreed and which read as follows:-

> *"In order to decide whether a person carries on business on his own account it is necessary to consider many different aspects of that person's work activity. This is not a mechanical exercise of running through items on a check list to see whether they are present in, or absent from, a given situation.* ***The object of the exercise is to paint a picture from the accumulation of detail. The overall effect can only be appreciated by standing back from the detailed picture which has been painted, by viewing it from a distance and by making an informed, considered, qualitative appreciation of the whole. It is a matter of evaluation of the overall effect of the detail, which is not necessarily the same as the sum total of the individual details. Not all details are of equal weight or importance in any given situation. The details may also vary in importance from one situation to another.*** *The process involves painting a picture in each individual case. As Vinelott J. said in Walls v. Sinnett (1986) 60 T.C. 150, 164: 'It is, in my judgment, quite impossible in a field where a very large number of factors have to be weighed to gain any real assistance by looking at the facts of another case and comparing them one by one to see what facts are common, what are different and what particular weight is given by another tribunal to the common facts. The facts as a whole must be looked at, and what may be compelling in one case in the light of all the facts may not be compelling in the context of another case.' "* (**Emphasis mine)**.

I shall start my analysis of whether there was a contractual relationship between the plaintiff and the defendant by referring firstly to the submissions made on behalf of the defendant with regard to the appointment of the plaintiff.

The Independent Commission Against Corruption is a body corporate set up under section 19 of POCA 2002. It is an independent and impartial body and prior to amendments brought to POCA 2002 by POCA 2005, it was headed by a Commissioner assisted by two deputies who were the three constituting members of the Commission. The appointment and termination of appointment of the Commissioner and the Deputy Commissioners were subject to sections 18 and 23 of POCA 2002, whereas section 24 empowers the Commission to recruit, appoint and dismiss its staff and officers subject to compliance with the provisions of POCA 2002.

The relevant parts of sections 18 and 23 of POCA 2002 read:-

*"**18. The Appointments Committee***

(1) There shall, for the purposes of this Act, be an Appointments Committee which shall be composed of the President, the Prime Minister and the Leader of the Opposition.

(2) The President shall chair every meeting of the Appointments Committee and every decision shall, subject to section 31(1) of the Interpretation and General Clauses Act, be taken by a majority of the votes, but the President shall have no casting vote.

(3) …..

(4) …..

(5) …..

(6) The Appointments Committee shall –

(a) appoint the Members; and

(b) receive the disclosure of assets and liabilities to be deposited under section 25.

(7) In the exercise of its functions, the Appointments Committee may –

(a) call for applications for appointment as Commissioner or Deputy-Commissioner by advertisement;

(b) interview such candidates as it considers necessary;

(c) delegate to such public officer as it may designate the power to establish a short-list of candidates;

(d) hold consultations with such person as it considers appropriate; and

(e) appoint the Commissioner or any Deputy-Commissioner without advertisement or interview.

23. Termination of appointment

(1) Where –

(a) the Appointments Committee has reason to believe that a Member has been guilty of such misconduct that his appointment ought to be terminated; or

(b) a Member is unable to discharge the functions of his office, whether such inability arises from infirmity of body or mind or any other cause,

the Appointments Committee may, by unanimous decision of its members, suspend the Member from office.

(2) Where the Appointments Committee suspends a Member under subsection (1), it shall forthwith refer the matter to the Attorney-General.

(3) …..

(4) …..

(5) …..

(6) …..

(7) …..

(8) Where the Appointments Committee decides that the appointment of the Member ought to be terminated, the President shall forthwith inform the Member accordingly in writing and his appointment shall be terminated."

The Appointments Committee composed of the President, the Prime Minister and Leader of the Opposition, was a very special mode of appointment mechanism devised by Parliament to effectively ensure that the appointment of the Members of the Commission was done in a manner to reflect the independence, autonomy and impartiality within which the Commission was set up to function.

Whilst the power of selection and appointment, the power to dismiss or suspend, the payment of wages or salary and the payment of National Pension Fund contributions are relevant indicia in the determination of the existence of a relationship of employer and employee, it is the existence of the relationship of subordination which is the distinctive feature that characterizes the relationship of employer-employee as laid down in **The Caledonian Insurance (supra), Bancilhon (supra)**, and **Moos (supra)**.

A definition of a *"lien de subordination"* has been given by the French Cour de Cassation as follows:-

> «*Le lien de subordination est caractérisé par l'exécution d'un travail sous l'autorité d'un employeur qui a le pouvoir de donner des ordres et des directives, d'en contrôler l'exécution et de sanctionner les manquements de son subordonné.»* (See **Cass. Soc. 13 nov. 1996, Bull. Civ. V, No 386**).

In deciding on this issue of subordination which includes the power to give directions, to control the execution of the work and the power to dispense with the services of the employee, the facts and surrounding circumstances of the case must be looked at and the question asked whether when looked at globally, the only possible inference is that the plaintiff was in the defendant's employment.

In his letter of appointment (Doc P2), the contractual documentation issued to the plaintiff, latter was offered appointment as Deputy Commissioner of the ICAC with effect from 1 June 2002 on terms and conditions set out in Annex I to the letter to carry out the objectives and functions of the Commission as provided in section 20 of POCA 2002. According to that letter, the plaintiff's appointment was for a fixed duration of 10 years during which time he was to occupy his post in a full-time capacity. Furthermore, he was restrained from engaging into any other activity for remuneration (see section 21(3) of POCA 2002). Therefore, his services and his whole time were devoted to and were at the disposal of the defendant in assisting the Commissioner in the proper running and functioning of the organisation. It was argued that the defendant had no direction or power to monitor or control the execution of the plaintiff's work. The answer to this submission is that it is not unusual for persons possessed of a high degree of professional skill and expertise to be employed under a contract of employment notwithstanding that their employers can exercise little, if any, control over the way in which such skill is used (*vide* **Morren v Swinton & Pendlebury Borough Council [1965] 2 All E.R. 349, D.C.** and **Whittaker v Minister of Pensions and National Insurance [1966] 1 Q.B., 156**). In such cases, the absence of the element of control and direction would not necessarily change the nature of the relationship

between the parties. It was also argued that the plaintiff did not work under the defendant's authority and did not receive any orders from it. The plaintiff was member of an organisation headed by a Commissioner who was himself empowered by section 19(7) of POCA 2002 to assign to the plaintiff such functions, duties and responsibilities as he considered appropriate. There is also evidence that the plaintiff was reporting to the Commissioner. This evidence has not been challenged or rebutted. Receiving instructions from the head of the organisation is identical to receiving directives from the defendant itself to which there is an implied duty of obedience, loyalty and cooperation. Therefore, the arguments of learned Counsel for the defendant have no merit.

In his further arguments in support of his submission that the defendant was not the plaintiff's employer, learned Counsel for the defendant referred to the following passage from the case of **Bancilhon (supra)** which is as follows:-

> *"In the special circumstances of the present contract and having regard to the terms of the LGSC Act, we do not share the view of the learned magistrate that it can be argued that the employer was the appellant simply because the latter paid the salaries, the more so that the element of subordination is significantly lacking….. We have seen that the appellant has no power of appointment or dismissal of its members. It is only the Minister who has those powers."*

The case of Bancilhon should be read in its proper context as the facts of that case are dissimilar to the present one. In that case the Local Government Service Commission (the LGSC) appealed against a decision of the Magistrate of the Intermediate Court which had condemned it to pay damages to the respondent for breach of contract. In reaching the conclusion that there was a clear absence of any *"lien de subordination"* between the appellant (LGSC) and the respondent (Bancilhon), the Appellate Court took into account that it was the Minister who appointed the Members of the LGSC while its Chairman was appointed by the Prime Minister in accordance with section 5(1)(a) of the LGSC Act and the salaries and allowances of the Members of the LGSC were approved by the Minister under section 5(3) of the LGSC Act and the removal from office of a Member was by the Minister in

conformity with sections 6(5)(a) and (b) and 6(6) of the LGSC Act. The Court took the view that being a member of the appellant, the respondent took no orders from the appellant but simply attended the meetings on days fixed by the Chairman for the purpose of executing the duties laid down under section 4 of the LGSC Act. The Court had also the following to say:-

> *"**...since the appellant, in the exercise of its functions, cannot be subject to the direction or control of any other person or authority, a contrario, it follows, by the same token, that the respondent** (**Bancilhon**) **in his capacity as a member of the appellant cannot be under the control of any person or authority.** If control there is, it is in a very limited sense and that control is not exercised by the appellant but by the Minister since a member of the appellant can be dismissed by the Minister if, for example, he fails to attend three consecutive meetings of the appellant." **(Emphasis mine)**.*

To come back to the present case, it could not have been the legislator's intention to confer wide powers to the Commission without having any safeguards built in the system to ensure the efficient performance of the tasks mandated by law to the Commission. Unlike in the Bancilhon case, in the present case, the law provided that the work of the Commission would be regularly scrutinized by the Parliamentary Committee which was vested with specific powers to monitor and review the manner in which the Commission was fulfilling its functions. This was the mechanism by which the Commission's performance was to be reviewed and monitored to give effect to the accountability principle. The Commission was also subject to other supervisory bodies set up under sections 39 to 42 of POCA 2002, which sections have now been repealed by POCA 2005.

Therefore, unlike in the case of Bancilhon where the Local Government Service Commission in the exercise of its functions was not subject to the direction and control of any other person or authority and where the Court also said that *a contrario*, it followed that the respondent (Bancilhon) in his capacity as a member of the appellant could not be under the control of any person or authority, in the present case, the manner in which the Commission, which at the material time constituted of a Commissioner and two Deputy

Commissioners, was fulfilling its functions, was being monitored and reviewed by the Parliamentary Committee.

Furthermore, in contrast to the situation in the case of Bancilhon where the respondent was merely attending meetings on days fixed by the Chairman of the LGSC for the purpose of executing the duties laid down in the LGSC Act, in the present case, the plaintiff was in full-time employment with the defendant and was receiving directions from its head, the Commissioner.

To borrow the words of Mummery J. when standing back from the detailed picture painted from the accumulation of detail, including the purport of the plaintiff's recruitment and appointment, to appreciate its overall effect, the only reasonable and logical inference is that the plaintiff was in the defendant's employment.

In view of the above, there is therefore no substance in the proposition of learned Counsel for the defendant that it was the State and not the defendant which was the plaintiff's employer, the more so as nowhere is it mentioned in the plaintiff's letter of appointment that the plaintiff entered into a contract with the State or that the State may terminate his appointment.

I shall now address the second issue.

Was there an arbitrary, unjustified and unlawful breach of the plaintiff's contract of employment by the defendant?

It was submitted on behalf of the defendant that there was no positive act of the defendant terminating the plaintiff's appointment which was brought to an end by an Act of Parliament. Therefore, the theory of *"fait du prince"* and/or *"force majeure"* should find its application and exonerate the defendant from liability. In support of his submissions, learned

Counsel relied on **F. Namdarkhan v Government of Mauritius [1997 SCJ 191]**. It was also submitted that since the legislator has fixed the amount of compensation payable for the plaintiff's loss of office by enacting section 29 of POCA 2005, the plaintiff is debarred from claiming, and the defendant cannot be ordered to pay damages or compensation over and above that which has been prescribed by the law as this would be contrary to the provisions of section 29 of POCA 2005.

In his written submissions, learned Counsel for the plaintiff argued that the plaintiff's contract which is a *"contrat synallagmatique ou bilatéral"* where *"les contractants s'obligent réciproquement les uns envers les autres"* (*vide* Article 1102 of the Code Civil Mauricien) could only be terminated in accordance with the express terms and conditions of his contract as set out in Annex I to his letter of appointment (Doc P2) namely either by the plaintiff submitting his resignation by giving at least 3 months' notice or under the specific conditions provided for under section 23 of POCA 2002. As neither conditions had been met, therefore, the defendant has unilaterally and unlawfully breached the terms and conditions of the plaintiff's contract of employment by prematurely revoking the plaintiff's contract before the expiry of the ten year period.

As regards section 29 of POCA 2005 and the plea of *"fait du prince"* and/or *"force majeure"* raised on behalf of the defendant, it was submitted by learned Counsel for the plaintiff that the defendant cannot hide behind the defence the doctrine of *"fait du prince"* and POCA 2005 to prevent the plaintiff from vindicating his rights under his contract of employment and under article 1184 of the Code Civil Mauricien to claim damages for the premature and unlawful termination of his contract of determinate duration.

It was not disputed that the termination of the plaintiff's employment was consequential upon an Act of Parliament which has abolished the post of Deputy Commissioner. Although learned Counsel for the plaintiff may be correct in his proposition that the defendant was bound by the express terms and conditions of the plaintiff's contract, however, as it has been accepted that the plaintiff's contract was put to an end when his

post was abolished by POCA 2005, the question of the defendant having unilaterally brought to a premature, arbitrary, unjustified and unlawful end the plaintiff's contract of employment therefore does not arise.

As regards the defendant's right to invoke the defence of *"fait du prince"* and/or *"force majeure"* and section 29 of POCA 2005, I do not subscribe to the views of Counsel for the plaintiff that the defendant is not entitled to do so. It is my view that the defendant is entitled to raise a defence which is available to it. It is for the Court to decide whether such defence is applicable to the circumstances of the case. Therefore, the submissions of learned Counsel for the plaintiff are devoid of merit.

The question that arises now is what are the resulting effects of the defence of *"fait du prince"* and/or *"force majeure"* on the rights and liabilities of the parties.

I find it apposite to refer to notes 178, 179, and 181 from Dalloz Encyclopédie Juridique Répertoire de Droit Social et du Travail which read:-

> *«**178.** Le «fait du prince» exonère l'employeur de toute responsabilité (V. infra, nos 179 et s., les décisions citées). Encore convient-il que la décision soit imposée par une autorité légitime, et non par l'organisme illégal que constitue un comité d'épuration (Soc. 2 juill. 1954, D. 1954. 632).*
>
> ***179.** Le cas de force majeure, dûment constaté et réunissant les caractères exigés, entraîne les conséquences suivantes. Si l'empêchement est de brève durée, avec l'espoir d'une reprise ultérieure de l'exécution, la force majeure entraîne la simple suspension du contrat de travail. Par contre, si l'empêchement est définitif ou durable, le contrat se trouve résilié sans indemnité de part et d'autre.*
>
> ***181. En matière de contrat de travail à durée déterminée, la force majeure libère les parties de leur obligation de respecter le terme, et notamment l'employeur échappe à toute condamnation à une indemnité pour brusque rupture (CAMERLYNCK, p. 281).»***

Is also relevant paragraph 352 of G. Camerlynck in his Traité de Droit du Travail which reads:-

> *«La force majeure prive en règle générale le travailleur – outre le paiement de son salaire – des diverses indemnités dues en cas de rupture par l'employeur, puisqu'il n'y a pas en cas de force majeure, et par définition même, de licenciement.»*

and note 357 of Dalloz Répertoire de Droit du Travail Tome II which provides:-

> *«Incidences de la force majeure. – En principe, la force majeure entraîne la cessation immédiate du contrat à durée déterminée et dispense l'employeur du versement de l'indemnité de fin de contrat; …»*

In the light of the above principles, the defendant cannot be held liable whether contractual or tortious for the premature termination of the plaintiff's contract of employment which everyone agrees was consequential upon an Act of Parliament which has resulted in the post of Deputy Commissioner being abolished.

Now, it was argued by learned Counsel for the plaintiff that section 29 of POCA 2005 which provides for the amount of compensation payable to the plaintiff for his loss of office violates sections 3 and 10(8) of the Constitution inasmuch as, by enacting section 29 of POCA 2005, Parliament has peremptorily and arbitrarily, in the absence of a constitutional amendment, fixed the amount of compensation payable to the plaintiff thus depriving the latter of his rights to seek redress for damages under his contract of employment and under article 1184 of the Code Civil Mauricien. Learned Counsel for the plaintiff also argued that although the plaintiff is not challenging the *"act itself of terminating the office of the Deputy Commissioner"*, however, in view of the defence raised by the defendant i.e. *"fait du prince"* and section 29 of POCA 2005 and is refusing payment of compensation which is due to the plaintiff for unjustified termination of his contract of determinate duration, the plaintiff is now entitled to challenge section 29 as being unconstitutional; in breach of the plaintiff's right to seek redress before a Court of law and in breach of his right to the protection of the law and against deprivation of property.

Ingenious and astute as the submissions of learned Counsel for the plaintiff with regard to the defence raised by the defendant may be, he cannot, having opted to bring a claim for damages for breach of contract against the defendant, now, seek to challenge the

constitutionality of a specific provision of the law in the particular manner he has done, and which in effect amounts to an attempt to circumvent the appropriate procedure under the Supreme Court (Constitutional Relief) Rules 2000, as rightly submitted by learned Counsel for the co-defendant.

The plaintiff having failed to establish that the defendant has unilaterally brought to a premature, arbitrary, unjustified and unlawful end his contract of employment, the plaint is accordingly dismissed with costs.

N. Devat
Judge

29 May 2014

For Plaintiff : **Ms Attorney Z.I. Salajee**
Mr. G. Glover, SC

For Defendant : **Mr Attorney S. Sohawon**
Mr K. Goburdhun, of Counsel together with Ms Bissoonauthsing, of Counsel

For Co-Defendant : **State Attorney**
Mr B. Madhub, Deputy Solicitor General