

Adelizzi v BV Megastore

2025 INT 290

CN 744/2020

THE INTERMEDIATE COURT OF MAURITIUS

(CIVIL)

In the matter of: -

Frédéric Adelizzi

Plaintiff

v/s

BV Megastores Ltd

Defendant

Judgment

1. By virtue of an amended proceipe dated 17th January 2022, the plaintiff is praying from this Court for a judgment ordering the defendant to pay to him damages in the sum of Rs 969,000 and Euro 25, 849 plus interest as a result of a breach of contract.
2. The plaintiff is a French national who was employed by the defendant and was earning a basic monthly salary of Rs 130,000 together with other monthly allowances for housing in the sum of Rs 20,000, a company car with petrol allowance up to Rs 10,000, telecommunication allowance up to Rs 5,000. He was also entitled to medical insurance of Euro 1,200 per annum and 22 days of local leave after one year of service.
3. By way of a letter dated 20th February 2020, the plaintiff received a '*letter of termination*' ending his contract of employment and was given 3 months' notice. However, plaintiff avers that his termination was unjustified and no reason was given to him.

4. It is the contention of the plaintiff that prior to his termination of employment, the defendant had breached the said contract of employment by depriving him of his '*voiture de fonction*', taking back from him the keys to the business premises and by reducing his salary from Rs 130,000 to Rs 50,000. He is thus claiming for material and moral damages amounting to Rs969,600 and the costs he incurred in order for him to return to France in the sum of Euro 25, 849.
5. The defendant on his part denies the averments contained in the amended plaint and state that the termination of the Fixed Term Contract was carried out lawfully.

Case for the plaintiff

6. The plaintiff, Mr F Adelizzi, was called to depone in Court. He stated that he is a French national and resided in Mauritius with his wife and children from June 2017 until June 2020 and produced a copy of his passport and residence permit which were marked as **[Docs A, B and B1]**. His wife, Mrs Nadège Adelizzi, was also working for the defendant back in 2020 and he produced her *occupation permit* which was marked as **[Doc C]**.
7. It was only in March 2019 that he was employed by the defendant as '*directeur de marque*' on a '*contrat à durée déterminée*' and produced his contract of employment which was marked as **[Doc D]**.
8. The plaintiff then confirmed the various clauses of the contract such as his remuneration, the various allowances he received and informed the Court that he was also benefitting from a '*voiture de fonction*' which according to the contract should have been of type '*pick-up*'. According to his job description he was supposed to increase and open various other similar shops across the Island, to recruit new employees and install new equipment. He then produced his '*descriptif de poste*' which he held with the defendant which was marked as **[Doc E]**. In the same breath he also produced his pay slip which was marked as **[Doc F]**.
9. On the 20th February 2020, he confirmed having a meeting with his employer, Mrs Mestre, together with the Human Resource Manager, Mr Mohamed, in order to explain the company strategy but the meeting came to a personal level. At the end of the meeting Mrs Mestre informed him that he would have done better as a manager in an office than

in this type of job in the retail.¹ He was also informed during the meeting that his contract is being terminated and produced a letter dated 20th February 2020 to this effect **[Doc G]**. On the same date, the plaintiff explained that he sent a letter to the employer which was produced and marked as **[Doc H]**.

10. On the 15th May 2020, the plaintiff sent an email to the defendant which was replied on the 19th May 2020 **[Doc J]**. A hardcopy of the letter dated 15th May 2020 was sent to the defendant on the 16th May 2020 which was produced and marked as **[Doc K]**.
11. However, on the 28th May 2020, the plaintiff sent another letter **[Doc L]** rectifying the amount claimed in the correspondence dated 16th May 2020 from Rs 878,348 to Rs 878,000. On the 18th May 2020, he received another letter from the defendant and produced same which was marked as **[Doc N]**.
12. The plaintiff explained that on the 3rd June 2020, yet another letter was sent to the defendant amending the amount claimed by him from Rs 878,000 to Rs 655, 948 and produced the said letter marked as **[Doc M]**.
13. The plaintiff explained that according to the letter **[Doc N]**, the defendant was impacted by hostile commercial climate causing substantial losses thus stating that the defendant's cashflow was unstable and resulting in its inability to sustain his employment. He thus sent a reply by email on the 19th May 2020 which was produced and marked as **[Doc P]**.
14. He deposed to the effect that on the 9th April 2020, his '*voiture de fonction*' which was allocated to him was taken away and he was left without any means of transport. He also had to return the keys of the shop which he did. He however, replied in protest by email on the same day and produced the email which was marked as **[Doc Q]**.
15. As far as his salary is concerned, he informed the Court that his basic salary is Rs 130,000 plus Rs 20,000 for housing allowance. However, on the 3rd April 2020 he received an email from the defendant, whereby he was informed that due to the Covid-19 and the fact that the shop was closed until further notice from the authorities, the employees earning salaries more than Rs 50,000 will be paid only Rs 50,000 and produced an email to this effect marked as **[Doc R]**. He was not agreeable to the fact that his salary from the month

¹ Pg 10 of the proceedings of the 5th October 2022

of April has been reduced to Rs 50,000 and stated that this constitutes a breach of contract.²He thus produced an email contesting this reduction which was marked as **[Doc S]**.

16. He also explained that his contract was terminated on the 19th May 2020 and he left Mauritius for France on the 6th June 2020. He is therefore also claiming Rs 29,400 as rent from the 19th May 2020 until 6th June 2020 date on which he left Mauritius and produced the contract marked as document **[Doc T]**.

17. Mr Adelizzi then went on to explain the various claims made under paragraph 18 of his plaint and produced **[Docs U, V, W, W1, W2, X, Y, Z and AA]** to sustain same. He also produced a letter addressed to his attorney from defendant's attorney which is a reply to his letter dated 28th May 2020 marked as **[Doc AB]**.

18. In cross-examination, the plaintiff confirmed that this matter is based on '*rupture abusive de contrat*'.³ He also conceded that he came to settle down in Mauritius in 2017 with his wife and two children and to work for a company named BOA. The said company was having financial problems and was unable to pay its employees and he therefore left the company to find work elsewhere. He then found employment with Jamoda Food in 2019, however again he had issues with them as he was not paid his salary every month and therefore decided to find a more stable job and that is when he decided to work for the defendant. He thus agreed that his employment with the defendant was his third employment in Mauritius.

19. He stated that although he was employed as '*directeur de marque*' whose main function was to look at sale of the shop nevertheless he was not aware of the defendant's financial situation. He was then shown the financial statement of the defendant for the year ending March 2020 showing a loss of Rs 6, 488,712 to which he replied there was definitely a loss but he was not aware. He did ask to meet the management but only got an appointment on the 20th February 2020 when he was given his letter of dismissal. He tried looking for another job but in vain. He then decided to return back to France where he stayed in a

² Pg 23-24 of the proceedings of 5th October 2022

³ Pg 35 of the proceedings of 5th October 2022

rented property as he had previously sold his house before coming to Mauritius back in 2017.

20. He confirmed having received an allowance of Euro 3,200 for a period of 10 months when he arrived in France.

21. In re-examination, he maintained that he needed his car and that the defendant had a duty to provide him with a means of transport.

Case for the defendant

22. The defendant chose to call Mrs Aurelie Florence Nicole Marie Mestre, director, as its first witness. She informed the Court that she is one of the three shareholders of the company. The defendant is a French franchise which deals in office equipment and was incorporated in 2019 and was first opened in Mauritius in August 2019.

23. She informed the Court that she knew the plaintiff as well as his wife, Nadège Adelizzi, as both of them were working for the defendant. Through his wife, she got to know that plaintiff had lost his job and was looking for an employment. After having spoken to him, the defendant decided to offer him employment as '*directeur de marque*.' For the first six months he was given training and only started working after the expiry of that period of time.

24. After some time when the finances of the defendant were checked with the accounts department the management realized that payments to creditors had not been effected and the financial status was bad. Mrs Mestre thus stated that in view of the situation, decision had to be taken thus explaining the urgent meeting with the plaintiff and the account department.

25. The meeting was held on the 20th of February, when Mrs Mestre explained to the plaintiff the financial situation of the company and its cashflow problem. She informed those present at the meeting that this situation can only be mended by a drastic cutdown in expenses and one of the major expenses of the defendant was the plaintiff's salary.⁴ He

⁴ Pg 11 of the proceedings of the 30th November 2023

was not happy and left the meeting. On the same day he was sent his dismissal letter **[Doc G]** informing him of the decision which was taken in his presence.

26. Mrs Mestre stated to the Court that the defendant again wrote to the plaintiff **[Doc N]** and explained its decision. She maintained that at no point in time was defendant's decision motivated by the consequences of Covid-19 as it was taken prior to March 2020.
27. She insisted that the plaintiff was never recruited as an expatriate as he was already in Mauritius when he came to the defendant looking for work and this will explain why clauses which are normally included in expatriates contract were not included in his contract.
28. She disagreed with the damages claimed and stated as per the contract she paid the three months' notice although such payment was delayed due to cashflow issues and since the shop was closed due to confinement.⁵
29. In cross-examination, she agreed that she gave the plaintiff 3 months' notice as per the contract. She denied that the meeting dated 20th February 2020 was about a verbal dispute between herself and the plaintiff as in the said meeting there were four persons present including the Accountant, Human Resource Manager, the plaintiff and herself.⁶
30. As far as the car is concerned, she agreed that as per the contract he was entitled to a pick-up but due to the financial situation of the company and since movement was restricted during Covid-19 and as the pickup was costing the defendant Rs 30,000 monthly, the defendant thought it right to ask for the return of the said vehicle. She emphasized on the fact that the plaintiff's wife who was also working for defendant was provided with a means of transport.
31. As far as the defendant's shop keys are concerned, she explained that all the shops across the island were closed due to Covid-19. As she was the holder of a special permit to circulate she deemed it fit to take plaintiff's keys in order to verify the shop.

⁵ Pg 16 of proceedings of the 30th November 2023

⁶ Pg 34 of proceedings of the 30th November 2023

32. In regards to plaintiff's salary for the months of April until 19th May 2020, she conceded that same was paid after a delay of 3 weeks due to the Covid-19.⁷ She however denied being indebted to the plaintiff in whatever sum asked as damages.
33. The defendant then called Mr Ackar Ally Tario Nuzooa, accountant. He informed the Court that he has been working as an accountant since 2008 and he is now a partner in an accounting firm called ACG. He deponed to the effect that between 2018 -2020 a subsidiary company of ACG was the Auditor of the defendant. He has been however authorized to depone in Court for that precise period as he had personal knowledge and produced his letter of authorization which was marked as **[Doc AC]**. He also produced a document from the Registrar of Companies showing the date of incorporation marked as **[Doc AD]**. The financial summary for the year 2019 was also produced and marked as **[Doc AE]**. The second financial statement of the defendant for the year ending 31st March 2020 was also produced. According to Doc AE, in the second year the company generated an income of 11,924,081 million rupees however, the defendant finished the financial year with a deficit of Rs 6, 488,714.
34. The witness therefore concluded that according to the financial statement dated 31st March 2020, the current assets was Rs 11,794.366 and current liability Rs 19,509.648 which therefore indicate that the company was '*nearly out of business*' by 8 million rupees.⁸ He explained that from the Rs 8 million there is an amount Rs 3.3 million representing the expenses for salary. At the time, he suggested some solutions and one of them would be reduction of staff.⁹ Mr Nuzooa thus produced the Accounts summary marked as **[Doc AF]**.

Analysis

⁷ Pg 30-31 of proceedings of the 30th November 2023

⁸ Pg 43 of proceedings of the 30th November 2023

⁹ Pg 45 of proceedings of the 30th November 2023

35. This case is based on breach of contract and it is not disputed that the contract is a '*contrat à durée déterminée*.'

Calling of Mrs Mestre to depone

36. However, before going into the merits of the case, this Court will have to consider the point taken by counsel for the plaintiff in his submissions with regards to the fact that a representative of the defendant can only represent the company provided he is allowed to do so by a board resolution. According to plaintiff's counsel, Mrs Shruti Gungapersand was the one who was designated to represent the defendant in Court and since she was not called to give evidence it is as if the evidence adduced by the plaintiff has remained un rebutted. It is the contention of the plaintiff that there was no board resolution empowering Mrs Mestre to represent the defendant.¹⁰

37. The defendant chose to call the sole company director, Mrs Mestre and the Accountant as witnesses to give evidence on its behalf and to rebut plaintiff's case.

38. It is clear from the record that counsel for the defendant informed the Court that '*Mrs Shruti Gungapersand has been mandated as a representative to sit in Court*.'¹¹

39. It has to be recalled that it is solely up to the defendant to decide how to conduct its case, who to call and what evidence to adduce as long as it does so by adducing admissible evidence, either through the defendant itself or its representative and/or by calling witnesses to rebut the case of the plaintiff.

40. It is clear that in the present matter, counsel for the defendant has chosen not to call the representative of the defendant to rebut the case for the plaintiff but has instead called the sole director of the company and the accountant. The sole director of a company is entitled without a board resolution, either to represent the company or, as in the present matter, to be called as a witness on behalf of the company.

¹⁰ Written submissions of plaintiff dated 18th July 2024

¹¹ Pg 4 of the proceedings 30th November 2023

41. In the case of **Syndic Management Company Ltd v Societe Blissful Palms** [\[2023 SCJ 512\]](#), where the Supreme Court held that a sole director is fully authorised to represent the company and a board resolution is not required.

“Pursuant to section 128(7)(b) of the Companies Act, for a one director company, the board is that director. Here, it is not a question of delegation of powers to Mr Sawmy. Mr Sawmy is the sole and only director and is the board and as such I find that he is right to aver that as sole and only director of the company, he is duly entitled to represent the company and does not need a board resolution to depose for the company. It is only where there is a delegation of powers by the board to a specific person that there is the need for a board resolution or when there is more than one director in the company that there is a need for a board resolution as to who will represent the company even if it will be done by one of the directors.”

42. It is not disputed that at the material time Mrs Mestre was the sole director of the defendant and this is evidenced by [Doc AD] from the Registrar of Companies. Counsel informed the Court that he would call the director of the company as a witness instead of Mrs Gungapersand who was mandated to represent the company. I therefore have no difficulty in concluding that Mrs Mestre was entitled to give evidence on behalf of the defendant as a witness and the issue of a board resolution does not even arise.

The Issue of a ‘contract à durée déterminée.’

43. It is not disputed that this contract is one of determinate duration [Doc D].
44. According to **Dalloz Repertoire Pratique Vol. VII Louage D’ouvrage et D’Industrie Notes 140 and 364**, the termination of such a contract before the contract period, is open to the parties:

“Note 140. Il peut aussi être convenu que, bien que fait pour une durée déterminée, le contrat pourra, avant l’expiration de cette durée, être résolu, soit par la réalisation d’un évènement déterminé, par exemple, si le patron se retire, ou si l’employé ne fait pas un certain chiffre d’affaires; soit par la volonté de l’une des parties”.

“Note 364. Les parties peuvent librement dans leurs conventions fixer toutes les conditions relatives aux délais de prévenance, sous la seule réserve que ces clauses concernent exclusivement le préavis qui doit être donné en cas de rupture”.

45. **Notes 140** and **364** were cited in the case of **De La Haye L.G V Air Mauritius Ltd** [\[2015 SCJ 244\]](#) and referred to in the case of **Lutchmeenaraidoo v Maubank Ltd** [\[2019 SCJ 94\]](#) which clearly demonstrate that in a contract ‘à durée déterminée,’ all the issues that would arise would depend solely on the various clauses of such a contract as long as they abide by the law in force at the time.

46. The **Workers Rights’ Act 2019** provides as follows:

‘61. Termination of agreement

- (1) *Every agreement entered into under section 13(1) shall terminate on the last day of the period agreed upon by the employer and the worker.*
- (2)

63. Notice of termination of agreement

- (1) *Subject to section 61(1), a party to an agreement may, except where he is prohibited by an enactment from doing so, terminate the agreement on the expiry of a notice, given by him to the other party, of his intention to terminate the agreement.*
- (2) *An employer shall, at the time of notifying a worker of the termination of his employment, state the reason of the termination.*
- (3) *Notice may be verbal or written and may, subject to subsection (4), be given at any reasonable time.*
- (4) *Notwithstanding any provision contrary in any agreement, the length of the notice to be given under subsection (1) shall not be less than 30 days.*
- (5)

47. Applying the above to the case at hand, in the contract [Doc D] under *Resiliation du contrat* - the following has been stipulated:

“La procedure de résiliation du present contrat se fera conformément aux lois en vigueur. Il est entendu que la période de préavis pour n’importe laquelle des deux parties et indépendamment du nombre d’années de service est de trois (3) mois.”

48. It is therefore undisputed that both parties to the above contract could have terminated same by giving 3 months’ notice. However, the plaintiff is claiming that the defendant has unlawfully failed to give any reason in support of the defendant’s unilateral decision to put an end to the said contract of employment.

49. I will now consider, whether a reason for the dismissal was given, bearing in mind the evidence adduced.

a) It has been acknowledged by both parties that a meeting was held on the 20th February 2020 following which the plaintiff received his letter of dismissal [Doc G] which states ‘*A la suite de la reunion de ce jour et comme convenu, nous vous informons....’*.

So, the fact that the meeting was held on 20th February 2020 is not contested by either of the parties but plaintiff is challenging the reason for the dismissal.

b) Both the plaintiff¹² and Mrs Mestre¹³ agreed that several persons were present during that meeting of the 20th February 2020, the Human Resource Manager, the director, the chief accountant and plaintiff. According to Mrs Mestre, the financial state of the company and the cashflow problem was discussed and explained to the plaintiff. He was then informed that his contract would be terminated due to economic reasons.

c) There is also a letter dated 18th March 2020 [Doc N], produced by the plaintiff himself, in which the defendant reiterated the reason for plaintiff’s dismissal and stated ‘*you were fully made aware, in a meeting held on the same day as your*

¹² Pg 10 of the proceedings 5th October 2022

¹³ Pg 11 of the proceedings 30th November 2023

termination letter, that BV Megastores Ltd, has been detrimentally impacted by the hostile commercial climate, which has caused it incurring substantial losses...'

- d) There is also the deposition of the Accountant, Mr Nuzooa, confirming that the company was '*nearly out of business*' with a loss of 6,488,72 rupees for the financial year which ended 31st March 2020.
- e) I also disagree with the plaintiff that he didn't know about the financial situation of the company since according to his '*descriptif de poste*' as '*Directeur de Marque*' [Doc E] under '*Gestion du budget et suivi des indicateurs*' it is clear he was supposed to

- (i) '*Suit le chiffre d'affaires par segment et global et évalue les résultats.*
- (ii) '*Gère les budgets*
- (iii) '*...*'

So, clearly as per his scheme of duties he should have been aware of the financial situation of the defendant.

50. On the other hand, the plaintiff stated that the meeting of the 20th February 2020 was conveyed at his request in order to discuss about the various strategies of the company. In cross-examination, when he was asked whether the requests for the meeting were made in writing he answered in the affirmative but was unable to produce any evidence to this effect.¹⁴

51. He deposed to the effect that during the said meeting there was an argument between Mrs Mestre and him and that is when he was informed about his dismissal.¹⁵ Apart from his version no other evidence was adduced.

52. Having taken into consideration all the evidence adduced before me, I fail to understand why would an HR manager be called in a meeting regarding strategic planning of the company as stated by the plaintiff. He also failed to produce any document showing that the meeting held on the 20th February 2020 was at his request and to discuss the strategies. It is also undeniable that as per the evidence under oath of the Chief

¹⁴ Pg 41 of the proceedings of 5th October 2022

¹⁵ Pg 11 of the proceedings of 5th October 2022

Accountant and various documents produced that is, the financial summary and account summary [Docs AE and AF], the defendant was on the verge of being *out of business*. This undoubtedly buttresses the evidence adduced by the defendant.

53. In light of the above, I am therefore not prepared to agree with the plaintiff that no reason for his dismissal has been given to him by the defendant during the meeting held the 20th February 2020 and that his contract of employment has been unlawfully terminated. I, thus find that there has not been any breach of contract on behalf of the defendant.

Damages

54. The contract being one of determinate duration, the defendant however has a duty and obligation under the contract of employment [Doc D] to give 3 months' notice and to pay to the plaintiff his remuneration and benefits which has been attributed to him under the said contract of employment. He was given notice on the 20th February 2020 and as per [Doc D] his last day of work should have been 19th May 2020.

55. It is clear from the evidence that the plaintiff had been working for other employers in Mauritius prior of being employed by the defendant and as such there is no clause in his '***contract à durée déterminée***' regarding repatriation. It was borne out from the evidence adduced in Court that the plaintiff came to Mauritius in 2017 to work for a company called BOA. This would explain the absence of such a clause in plaintiff's contract of employment and he cannot therefore claim any of the damages claimed under paragraph 18 (b) of the plaint.

56. Now, as far as paragraph 18 (a) is concerned, when it comes to the car, I have no qualm in allowing the amount of Rs 13,000 claimed since under the contract the defendant had an obligation to provide to the plaintiff with a means of transport '*de type pick-up.*' Being given this was removed from him since 9th April 2020, the said amount is allowed.

57. When it comes to his remuneration, there is a letter dated 3rd April 2020 [Doc R], whereby the plaintiff's remuneration was reduced to Rs 50,000 per month due to Covid-19Th and the remaining amount would be paid at a later stage once the confinement period is removed and the businesses are back to normal operations and hence generating revenue from sales.

58. Mrs Mestre stated that the remaining amount on the salary that was due to the plaintiff for the month of April and the rest of May 2020 was paid to him.¹⁶ However, the defendant failed to produced any documents to this effect and as such I am not prepared to accept that the plaintiff has been paid his full remuneration for the month of April 2020 until 19th May 2020.
59. According to his contract of employment under '*Les Horaires*' the plaintiff was supposed to work on Saturdays, Sundays including public holidays and was earning Rs 130,000 monthly. So, as far as the month of April is concerned, the defendant should be paid the remaining Rs 80,000 and for May Rs 29,678 which has been calculated on a pro-rata basis.
60. The Court cannot entertain his claim for damages under paragraph 18 (a)(i) for rent of a house from 18th May 2020 until 3rd June 2020 since his contract of employment was terminated on the 19th May 2020. In the same breath, no document was produced under the item '*Health Specialist Expenses*' for Rs 7,200 and therefore this amount cannot be allowed.
61. The Court therefore finds that there has been no breach of contract. However, as stated above the defendant had undertaken to pay to the plaintiff the remaining of his salary and his benefits that were substantiated and proved in court.
62. I therefore order the defendant to pay the sum of Rs 122,678 to the plaintiff which represents the remaining remuneration and rental of car. With Costs.

A.Purryag-Ramful
Vice- President, Intermediate Court (Civil Division)
24th September 2025

¹⁶ Pg 30 of the proceedings of 30th November 2023