

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CC 33/2013

[2015] SCSC 212

SEYCHELLES PETROLEUM COMPANY LTD

Plaintiff

versus

ROBERT MOREL

First Defendant **JULIETTE HOAREAU**

Second Defendant

Heard: 9 July 2014

Counsel: John Renaud for plaintiff

Basil Hoareau for defendants

Delivered: 1 July 2015

RULING

Robinson J

[1] Current dispute

[2] The plaintiff filed this cause on the 2nd December, 2013, alleging a cause of action for breach of agreements against the first and second defendants, and claiming Seychelles Rupees 446,817.72 in damages.

[3] The first and second defendants filed a defence on the 14th May, 2014, denying the claim of the plaintiff, and, raising a point *in limine litis*. The essence of the point *in limine litis*

is that this is an "*employment related matter*" that falls within the exclusive jurisdiction of the Employment Tribunal and that the Supreme Court, therefore, has no jurisdiction.

[4] Submission of counsel

[5] For the present, this court is concerned with the point in limine litis raised by learned counsel for the first and second defendants. Learned counsel for the first and second defendants submitted that this court has no jurisdiction to entertain the present case because it relates to an employment matter. For this submission he relied on Rule 3 (1) of Schedule 6 (hereinafter referred to as "Rule 3 (1)"), which Schedule 6 is made under section 73A of the Employment Act, 1995, as amended. The Employment Act, 1995, as amended, is hereinafter referred to as "the Act".

[6] Learned counsel for the first and second defendants outlined the issue as follows. He contended that this is an "*employment related matter*" because the first defendant, who was an employee of the plaintiff, as averred by the plaintiff in the Plaint, has breached his obligation to work under the "*Bond/Agreements*". Elaborating further on the submission, while admitting that the "*Bond/Agreements*" do not constitute contracts of employment under the Act, he contended that Rule 3 (1) finds application because the phrase "*employment related matters*", contained in Rule 3 (1), applies to a matter in relation to a contract of employment under the Act.

[7] In support of the contention that this is an "*employment related matter*", learned counsel for the first and second defendants relied on the following averments contained in the Plaint. The plaintiff "*sponsored*" the training of the first defendant on or about April, 2010. The first defendant signed a "*Bond/Agreement*" with the plaintiff on the 28th April, 2010. It was a term of the "*Bond/Agreement*" that, "*the First Defendant on completion of his training to return to the Republic of Seychelles and to work for the Plaintiff for a period not exceeding four and half (4.5) years (the bond period)*". The plaintiff sponsored the training of the first defendant again on or about February, 2012. The first defendant signed a "*Bond/Agreement*" with the Plaintiff on the 13th February 2012. Pursuant to Article 2 of the "*Bond/Agreement*", "*the First Defendant on completion of his training to*

return to the Republic of Seychelles and to work for the Plaintiff for a period not exceeding one and half (1.5) years (the bond period)". The first defendant wrote to the plaintiff through his lawyer on the 3rd October, 2012, claiming, among other things, that, "[t]he First Defendant is repudiating the contract by way of rescission and will not continue to honour its terms and condition". The plaintiff has averred that, by repudiating his contract of employment with the plaintiff, the first defendant has breached the "Bond/Agreements" and, therefore, is liable to the plaintiff.

[8] Learned counsel for the plaintiff did not accept the submissions for the first and second defendants. He contended that Rule 3 (1) has no application because an employment dispute does not exist between the plaintiff and the first and second defendants. On this issue, he contended that the contract of employment between the plaintiff and the first defendant is separate and distinct from the "Bond/Agreements" between the plaintiff and the first and second defendants.

[9] He contended, further, that the second defendant cannot be sued before the Employment Tribunal because of a lack of employer-employee relationship between the plaintiff and the second defendant.

[10] Discussion

[11] The point in the present case is whether or not the Plaintiff and the first and second defendants are involved in an employment related dispute. If this is an employment related matter then this court has no jurisdiction to entertain it.

[12] In short, the "Bond Agreements" were agreements entered into between the plaintiff and the first and second defendants, whereby the plaintiff agreed to "sponsor" the training of the first defendant in Australia and the first defendant agreed, upon the completion of the training, to work for the plaintiff for the duration of the "bond period". The second defendant bonded herself with the first defendant, under the "Bond/Agreements", jointly and severally, to the payment of the "Bond/Agreements" in the event of a breach of any of the "Bond Agreements".

[13] Section 73A of the Act enables Schedule 6. Section 73A of the Act, so far as relevant, provides —

"73A (1) There is hereby established a Tribunal which shall be known as the Employment Tribunal.

(2) Schedule 6 has effect with respect to the Employment Tribunal, its composition, jurisdiction, powers and otherwise."

[14] Rule 3 (1) provides —

"Rule 3 (1) The Tribunal shall have exclusive jurisdiction to hear and determine employment and labour related matters."

[15] This court has to determine with reference to the pleadings which cause of action is relied upon in view of the position of the plaintiff that the "*Bond/Agreements*" are separate and distinct from the contract of employment. This court reproduces paragraphs 11, 12 and 13 of the Plaintiff —

"11. The Plaintiff avers that the First Defendant by repudiating his contract with the Plaintiff has breached the agreement therefore is liable to the Plaintiff to the sum of Rupees Four Hundred and Forty Six Thousand Eight Hundred and Seventeen and Cents Seventy Two (R446, 817.72).

12. The Plaintiff avers that the Second Defendant bonded herself with the First Defendant, jointly and severally to the payment of the said Bond Agreements.

13. That in breach of the agreements, the First and Second Defendants are indebted to the Plaintiff in the sum of (R446.817.72)."

A reading of paragraphs 11, 12 and 13 of the Plaintiff indicates that the plaintiff is relying on a breach of the "*Bond/Agreements*" resulting from the repudiation of the contract of employment. This court observes that the Act applies to the following —

"(a) a contract of employment for service in Seychelles or on a Seychelles ship or aircraft;

(b) a contract of employment entered into Seychelles for service in an agency of the Government or diplomatic mission of Seychelles abroad." (Section 4 of the Act, so far as relevant).

A reading of the above provisions of the Act shows that they do not apply to the "*Bond/Agreements*" because they do not constitute contracts of employment under the Act. This is the view held by the plaintiff and the first and second defendants. This court also concurs with this view. However, as noted earlier, the point in this case is whether or not the alleged breach of the "*Bond/Agreements*" is a matter related to employment, under Rule 3 (1)?

[16] The Act does not define the phrase "*employment-related matters*". This court respectfully opines that the words should be given their ordinary meaning in the context of the jurisdiction provision. The term employment refers to the relationship between the employer and the employee under the Act. The term employment-related requires that the individual be in an employment relationship.

[17] This court agrees with learned counsel for the first and second defendants that the plaintiff and the first defendant were in an employer-employee relationship. With reference to the pleadings, the first defendant was required to work for the plaintiff, upon the completion of the training, for the duration of the "*bond period*". On the 3rd October, 2012, the first defendant repudiated his contract of employment with the plaintiff. The effect of the repudiation amounted to a breach of the "*Bond/Agreement(s)*" in view of the fact that the first defendant had not worked for the duration of the "*bond period*".

[18] In light of the above, this court opines that the "*Bond/Agreements*" are not separate and distinct from the contract of employment. The pleadings show clearly that the "*Bond/Agreements*" are connected substantially to the contract of employment.

[19] Having come to the above conclusion, this court is of the opinion that the Employment Tribunal will deal with the issue of its jurisdiction under Rule 3 (1) with respect to the question of whether or not it has jurisdiction to deal with the second defendant under the "*Bond/ Agreements*".

[20] Decision

[21] In light of the above, this court upholds the plea *in limine litis* and dismisses the Plaintiff.

[22] Costs to the first and second defendants.

Signed, dated and delivered at Ile du Port on 1 July 2015

F Robinson
Judge of the Supreme Court