

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**CIVIL ACTION NO. : HBC 338 of 2009**

**BETWEEN** : **SANGEETA DEVI REDDY BRIDGEMAN**  
**Plaintiff**

**A N D** : **MOKOSOI PRODUCTS (FIJI) LIMITED**  
**Defendant**

**COUNSEL** : Ms. B. Malimali for the Plaintiff  
Mr. R. Singh for the Defendant

**Date of Judgment** : **23<sup>rd</sup> September 2015**

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**JUDGMENT**

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[1] The plaintiff filed this action by way of writ of summons seeking the following reliefs;

- (1) An order directing the defendant to pay the plaintiff \$ 43856.12 as special damages;
- (2) General damages;
- (3) Punitive damages;
- (4) A declaration that the decision of the defendant to terminate her services was unfair and unlawful;
- (5) Interest in terms of section 3 of the Law Reforms (Miscellaneous)(Death and Interest) Act (Cap 27); and
- (6) Costs.

[2] The special damages of \$ 43856.12 claimed by the plaintiff includes loss of earnings from 16<sup>th</sup> March 2009 to 30<sup>th</sup> March 2009, loss of three months' pay,

loss of PAYE contribution, loss of FNPF contribution, leave payment, reimbursement for personal cheque written to Oral Printers and the amount contributed to Company Savings Fund.

- [3] The defendant while denying the averments in the statement of claim of the plaintiff prayed that the claims of the plaintiff be dismissed with costs.
- [4] The plaintiff's case is that she joined the defendant company on or about 05<sup>th</sup> June 2006 and was given the post of General Manager and her duties included sales, marketing, human resource management and administrative duties.
- [5] On or about 24<sup>th</sup> March 2009, while she was overseas the defendant terminated her services without giving any reason and the decision to terminate her services was communicated over the telephone. It is the position of the plaintiff that her dismissal from employment by the defendant without offering her an opportunity of being heard was unlawful and contrary to principles of natural justice. The plaintiff also averred in her statement of claim that she holds the defendant liable in negligence.
- [6] Her evidence at the trial was that on 23<sup>rd</sup> February 2009 she took her husband out of the country for medical treatment and when she called the defendant company on 24<sup>th</sup> February 2009 she was told that her services were no longer required by the company and the Chairman told her that a new General Manager had already been appointed. The plaintiff in her evidence stated that Mr. Kenneth Robertson, the then Chairman of the company and she were living together in a *de facto* relationship and that the said relationship existed even at the time of giving evidence.
- [7] The defendant denied having terminated the services of the plaintiff. On behalf of the defendant company one of its Directors Ms. Rosalia Chute and another witness Ms. Joanna Tarte testified. Both these witnesses were unaware of what transpired between the plaintiff and the then Chairman of the defendant company because both of them have joined the company after the plaintiff left the company and it went into liquidation. Their evidence is that after Ms. Rosalia Chute took over the company she settled all the debts including the amount due to the Fiji National Provident Fund.
- [8] The initial question for determination in this case is whether the plaintiff's services were terminated by the defendant unlawfully.

- [9] The document marked "D1" is an electronic mail, admittedly, sent by the plaintiff informing Kenneth Roberts, the then Chairman of the defendant company, that she was resigning from the company with effect from 24<sup>th</sup> May 2009, which was accepted by the then Chairman by his electronic mail dated 25<sup>th</sup> February 2009. Although the plaintiff denied in her affidavit in reply dated 14<sup>th</sup> January 2010 that she resigned from the employment, in evidence she admitted it. It is her evidence that the reason for the tendering of her resignation was that the Chairman was abusive towards her and she was frustrated and annoyed.
- [10] It is thus clear that the allegation of the plaintiff that her services were unlawfully terminated is false.
- [11] The next issue for consideration is whether the plaintiff is entitled to recover the salary for the period of three months commencing from 23<sup>rd</sup> February 2009.
- [12] For the plaintiff to become entitled to the salary for the said period she must work for her employer or at least she must obtain leave for that period. It is not in dispute that the plaintiff did not serve the defendant company after tendering her resignation. It is the position of the plaintiff that when she called the company she was informed by the then chairman that a new General Manager had already been appointed and that her services were not required any further. If this position of the plaintiff is correct then she is entitled to recover her salary for the period of three months from the date of the resignation. At this stage it is important to consider the contents of the electronic mail sent by the then Chairman of the defendant company accepting the resignation of the plaintiff which reads as follows;

*I acknowledge receipt of your note re your resignation, which is accepted. I propose to work with you on the details re timing etc., but first would like to receive a written report on the status of all orders, and particularly the order for Miya & Co.*

*I also will be happy to discuss your plans for your future activity in Australia. Perhaps you may be able to continue your association with Mokosoi in a less stressful environment.*

- [12] This electronic mail does not in any way suggest that the then Chairman of the defendant company intended to keep the plaintiff away from the company. In

fact he has suggested her to work with the company in a less stressful environment.

- [13] It is also pertinent to note that on the 25<sup>th</sup> of April 2009 the plaintiff published a notice in the Fiji Times newspaper advising the public that she has resigned from the defendant company which reads thus;

*I wish to advise that I am no longer the General Manager of Mokoosi Products (Fiji) Ltd and I do not wish to undertake any responsibilities or dealings or arrangements that I made with customers and suppliers during my term. My term finished on the **24<sup>th</sup> of March 2009.***

*I wish to advise that I have now relocated to QLD and have a registered company "Natural Fiji" importing natural products from Fiji. If you wish to enter the Australian market I am looking to make contact with suppliers of natural products. [Emphasis is added].*

- [14] It is clear from this notice that the plaintiff had had no intention whatsoever in serving the defendant company for the period for which she claims her salary. Immediately after informing the defendant company about her resignation she has started another similar business in Queensland. An employee is entitled to draw a salary for the work he or she has done for his or her employer. In the instant case the employee after giving notice of resignation in terms of the contract of employment chose not to sight the work place again. In the circumstances the plaintiff does not have a legal or moral right to come before this Court and claim salary for the period within which she did not provide any service to the defendant company.

- [15] The plaintiff claims \$ 14,400 for the loss of Fiji National Provident Fund contribution.

- [16] Section 56 of the Fiji National Provident Fund Act provides as follows;

- (1) All contributions payable under the provisions of this Act may, without prejudice to any other remedy, be recoverable by the Board as a debt due.
- (2) Proceedings for the recovery as civil debts of any contribution may, notwithstanding anything in any other Act to the contrary, be brought at any time within 6 years from the date when the contribution becomes due.

- (3) Proceedings for the recovery as civil debts of contributions may be instituted by the Manager, or by any officer, servant or agent of the Board authorized in writing in that behalf by the Manager, and the Manager or any such authorized officer, servant or agent may conduct any such proceedings whether or not he was the person who instituted the proceedings. (Substituted by Act 21 of 1974, s. 7.)
- (4) In this section, the word "contribution" shall be deemed to include any surcharge under the provisions of section 14.

[17] In the case of **Colonial Insurance Agents Association vs. BSP Life (Fiji) Ltd**<sup>1</sup> it was held:

In relation to contributions that are required to be made by the first defendant to the Fund on behalf of its employees (Insurance Agents) the FNPF Act provides both criminal and civil remedy for any breaches of the obligation imposed by the Act. The remedies are set out in section 49 and section 56 of the Act. As a result, in my judgment, the intention of the FNPF Act is that there is no right to enforce the statutory obligation or to bring an action for a breach of that statutory obligation available by a private cause of action commenced by a third party such as plaintiffs.

[18] In view of the provisions of the Fiji National Provident Fund Act and the decision referred to above the plaintiff has no right in law to bring this action claiming the contribution payable by the employer to the Fiji National Provident Fund. Fiji National Provident Fund contributions cannot be recovered by an employee directly from the employer. It is the responsibility of the Fiji National Provident Fund to recover such contributions and pay to the respective employee.

[19] The plaintiff also claims \$ 18069.12 as loss of "PAY AS YOU EARN" [P.A.Y.E] tax contribution for thirty six months. It is her allegation that the defendant although deducted a percentage from her salary for tax purposes it had failed to remit such deductions to the Fiji Islands Revenue and Customs Authority and she is now facing the danger of being prosecuted for nonpayment of taxes.

[20] Although the plaintiff claimed that the defendant deducted a percentage of her salary as PAYE tax she has not been able to give the necessary particulars of such deductions. When she was questioned whether she has documents to establish this claim she answered in the negative. The learned counsel for the plaintiff along with the written submissions has tendered certain statement

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<sup>1</sup> [2011] FJHC 410, HBC 479.2006 (26<sup>th</sup> July 2011)

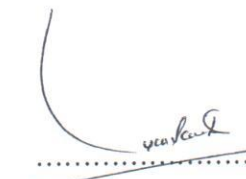
issued by the Fiji National Provident Fund and the Fiji Islands Revenue and Customs Authority. These documents were not tendered at the trial and the defendant had no notice of these documents. Since the law does not provide for such a practice I do not consider these documents in my findings.

- [21] The plaintiff did not give particulars of the PAYE tax deductions enabling the Court to arrive at a finding as to the amount deducted as taxes from her salary. Without sufficient materials on record to calculate the amount due as PAYE deductions the Court is not in a position to award the amount claimed by the plaintiff.
- [22] The plaintiff claimed in her statement of claim \$ 479 and \$ 958 as leave payments for five days in 2008 and for ten days in 2009 respectively. He plaintiff did not explain what these payments were nor did she adduce any evidence to show Court that she was legally entitled to these payments.
- [23] The plaintiff also claimed \$ 700 as the amount paid to Oral Prints by a personal cheque and another \$ 500 as other entitlements such as the contributions made to the Company Savings Fund. There is no evidence that she made a payment of \$700 on behalf of the defendant out of her own money. It was revealed in evidence that the defendant had no involvement in the "Company Savings Fund" and it was a welfare fund of the employees of the defendant company.
- [24] The learned counsel for the plaintiff submitted that the plaintiff is entitled to damages for mental distress and cited various authorities in support of her submissions. The facts of the cases relied on by the learned counsel are different to those of the case before this Court. In all those cases there had been termination of the employee by the employer. In this case, as I have already held, there is no question of termination of the services of the plaintiff by the defendant. The learned counsel for the plaintiff attempted to convince the Court that the letter of resignation was sent under mental distress and therefore she was entitled to claim damages. I have already discussed factual background of the case and held that the resignation was a voluntary act of the plaintiff.
- [25] It is also the position of the plaintiff that the defendant was making arrangements to remove her from office. In this regard she tendered in evidence a draft of a letter terminating her employment. This letter has very little evidentiary value. It has not been served on the plaintiff nor has it been signed by anybody. This draft letter had been prepared almost five months before the resignation of the plaintiff and there is no evidence that the matters referred to

in that letter motivated the plaintiff to resign from the employment. Even if it was so she could not have taken such a long time to tender her resignation. This letter only shows that there were disputes between the then chairman of the defendant company and the plaintiff which is not sufficient for the Court to conclude that this letter motivated the plaintiff to resign five months later.

[26] For the reasons aforementioned I make the following orders;

- (1) The action of the plaintiff is dismissed.
- (2) The plaintiff shall pay the defendant \$ 2000 as costs (summarily assessed) of this action.

  
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Lyone Seneviratne  
**JUDGE**

