

IN THE EMPLOYMENT RELATIONS COURT  
AT SUVA

ERCC No. 22 of 2020

BETWEEN : MOVINA PRAVEEN

PLAINTIFF

AND : MINDPEARL LIMITED a company incorporated in THE  
CAYMAN ISLANDS

DEFENDANT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. D. Sharma for the Plaintiff

: Mr. J. Apted for the Defendant

Date of Hearing : 4 March 2022

Date of Decision : 27 October 2023

# DECISION

*Employment Law*                      *Dismissal – Unfair termination – Compensation – Sections 211, 220 & 230, Employment Relations Act 2007 – Order 18 rule 18, High Court Rules 1988*

The following case is referred to in this decision:

a. Buksh v Bred Bank (Fiji) Ltd [2021] FJHC 59; ERCC 02.2019 (27 August 2021)

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1. The plaintiff filed action seeking a declaration that the termination of her employment was unfair and unlawful, an order setting aside the termination letter dated 21 January 2020 and for orders under section 230 of the Employment Relations Act 2007.
2. The statement of claim stated that the defendant employed the plaintiff on 31 August 2009 as a finance coordinator. By 2020, she was made the finance manager. She was dismissed from employment on 21 January 2020. The plaintiff claimed that her employment was terminated on alleged performance related issues, although the defendant purported to terminate her employment for reasons of redundancy.
3. The plaintiff stated that by letter dated 28 January 2020, the defendant's chief executive officer explained the reason for the redundancy, but that this was not previously discussed with her. The plaintiff said she was offered a redundancy package of \$21,154.02 and a further \$10,000.00 in consideration of her service for 10 years. She declined the redundancy package. The plaintiff stated that she filed action in the Employment Relations Court as her claim is in excess of \$40,000.00.
4. The defendant filed a summons on 28 July 2020 to strike out the action under Order 18 rule 18 (1) of the High Court Rules 1988 on the basis that the Employment Relations Court has no jurisdiction to adjudicate the claims pleaded in the statement of claim.
5. At the hearing, the defendant submitted that the plaintiff did not plead the contract as a basis for the action, and that the statement of claim alleges that

redundancy is not genuine, and, therefore, dismissal was unfair and unlawful. The complaint is that she was not treated fairly during the redundancy process.

6. The defendant submitted that the court's original jurisdiction is confined to the matters in section 220 (1) (h), (k), (l) and (m), and that the plaintiff's claim does not raise any matter under those provisions. The defendant states that although the claim is not expressed to be an employment grievance, the plaintiff makes claims and seeks remedies that can only be brought by way of an employment grievance.
7. The plaintiff submitted that although the defendant is seeking to strike out the action on a technicality, the court has powers under section 220 (3) and (4) of the Act to hear the case. Section 220 (3) says the court has full and exclusive jurisdiction to determine them in a manner and to make decisions or orders not inconsistent with the Promulgation or any other written law or with the employment contract. Section 220 (4) says no decision or order of the court, and no proceedings before the court, may be held to be invalid for want of form, or be void or in any way vitiated by reason of an informality or error in form.
8. The term employment grievance is defined in the Act to mean,  
"A grievance that a worker may have against the worker's employer or former employer because of the worker's claim that –
  - (a) The worker has been dismissed;
  - (b) The worker's employment, or one or more conditions of it, is or are affected to the worker's disadvantage by some unjustifiable action by the employer;
  - (c) The worker has been discriminated within the terms of Part 9;
  - (d) The worker has been sexually harassed in the worker's employment within the terms of section 76; or
  - (e) The worker has been subject to duress in the worker's employment in relation to membership or non-membership of a union".

9. Counsel for both parties made reference to the interlocutory decision of 27 August 2021 in *Salim Buksh v Bred Bank (Fiji) Ltd*<sup>1</sup>. In that decision, the court commented on its original jurisdiction to hear an employment grievance.
10. The particulars of the plaintiff's claim are set out in this way: she was subjected to false allegations about her performance and threatened with dismissal; the defendant effected immediate suspension in January 2020, dismissed her and tried to disguise it as a redundancy; the defendant failed to adhere to the basic requirements and tenets relating to a redundancy and did not make full and frank disclosure regarding the reasons for the redundancy; the defendant's representations contained contradictions and allegations on performance; she was not properly counselled about the reasons for the alleged redundancy, and was also not consulted; the defendant created false timelines and failed to take genuine steps to avoid the alleged redundancy, to retrain her or to make a genuine effort towards redeployment; the defendant failed to negotiate a redundancy package in good faith; she was subject to unnecessary duress, and was not treated with dignity and respect, and escorted out of the office like a criminal; and caused her humiliation by forcing her to take garden leave.
11. These are matters that can be raised as an employment grievance.
12. Section 110 (3) of the Act requires all employment grievances to be first referred for mediation services. Section 194 (5) of the Act states that if a mediator fails to resolve an employment grievance or an employment dispute, the mediator shall refer the grievance or dispute to the Employment Relations Tribunal. Section 211 (1) (a) confers the tribunal with the jurisdiction to adjudicate on employment grievances. Parliament has mandated mediation procedures and vested the tribunal with features that are meant to assist in the effective resolution of or adjudication of grievances. Mediation services, the tribunal and the court have been established to carry out their different powers, functions and duties. The statutory scheme is such that an employment grievance must be referred for mediation and adjudicated in the tribunal in the first instance. When a worker files an employment grievance directly in court, the mandatory mediation

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<sup>1</sup> [2021] FJHC 259; ERCC 02.2019 (27 August 2021)

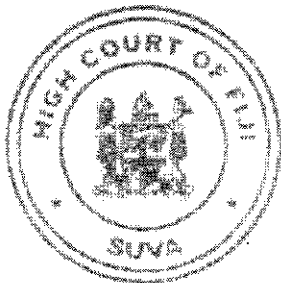
process prescribed by Parliament is avoided. This could not have been the intention of the statutory scheme.

13. The Employment Relations Court's original jurisdiction is set out in sections 220 (1) (h), (k), (l) and (m) of the Act. The Act does not confer on this court the original jurisdiction to hear an employment grievance except in the way allowed by law. Proceedings can be transferred from the tribunal to the court under section 218. Section 221 allows the court to order compliance. Under section 230 (1) of the Act the court can grant remedies where an employment grievance is brought before it by way of transfer or in appeal. There is nothing in the statute to say that the tribunal's monetary limitation will confer jurisdiction on the court to hear an employment grievance.
14. For the reasons stated above, the court does not have original jurisdiction to hear the plaintiff's claims.

### ORDER

- A. The plaintiff's action is struck out.
- B. The plaintiff is to pay the defendant costs summarily assessed in the sum of \$500.00 within 21 days of this decision.

Delivered at Suva on this 27<sup>th</sup> day of October, 2023.



M. Javed Mansoor  
Judge