

IN THE EMPLOYMENT RELATIONS COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

ERCA No. 12 of 2019

BETWEEN : SCORPION INVESTMENTS LIMITED

APPELLANT

AND : RADESHNA GOUNDAR

RESPONDENT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. V. Singh for the Appellant

: Ms. M. Rabele for the Respondent

Date of Hearing : 29 July 2022

Date of Judgment : 4 January 2024

JUDGMENT

EMPLOYMENT LAW:

Appeal – Dismissal – Abandonment of

employment – Employment Relations Act 2007

1. The respondent filed an employment grievance alleging that her employment was terminated by the appellant on 6 November 2014. She commenced employment in October 2013, and was employed as a cashier. Upon dismissal she referred her employment grievance to mediation services on 7 November 2014, the day after she was said to have been dismissed. As there was no settlement the grievance was referred to the Employment Relations Tribunal.
2. Before the tribunal, the appellant denied dismissing the employee, and claimed that she voluntarily left employment and refused to return to work. After a hearing, the resident magistrate, by determination dated 22 September 2017, held that the respondent's employment was terminated.
3. The court allowed the appellant's summons for leave to file the appeal out of time. As the facts in this appeal and the facts in *ERCA 13 of 2019* – in which another employee Pooja Archana Devi – arise from the same incident and related circumstances, the parties moved that hearing into both matters be taken up together.
4. The appellant raised the following grounds of appeal:
 - i.* “The Tribunal erred in law and in fact in finding that there was an immediate threat to health informed by the Grievors to their immediate supervisor.
 - ii.* The Tribunal erred in law and in fact in finding that the Employer did not take action according to section 25 of the OHS Act.
 - iii.* The Tribunal erred in law and in fact in finding that the Employer should have complied with section 25 (3) of the OHS Act.

- iv.* The Tribunal erred in failing to consider that neither the Employer nor its solicitors was advised during the proceedings of a grievance in the aspect of section 25 of the OHS Act.
 - v.* The Tribunal referred to section 25 of the OHS Act in making its decision when the grievances filed by the Respondents did not make any reference or reliance on the said section.
 - vi.* The Tribunal erred in failing to give consideration to the evidence in submissions presented by the Appellant and failed to assess this in the delivered on 22 September 2017.
 - vii.* The Tribunal erred in its decision in failing to consider the contradictory evidence given by the Respondents and their witnesses.
 - viii.* The Tribunal failed to consider that the Grievor wilfully left her employment without being terminated.
 - ix.* That the Tribunal erred in its decision in awarding the Respondents 3 months wages as compensation for unlawful dismissal.”
5. On the day of the hearing, counsel for both parties submitted that they would rely on their written submissions.
 6. The appellant submitted that the respondent was required to stay back at work to help oversee the unloading of new stocks at the shop. However, she refused to stay back and assist, but gave no reason for her refusal. The respondent did not, the appellant submitted, mention any risk to health by performing her work.
 7. It was contended that the tribunal erred in saying that the appellant should have complied with section 25 of the Health and Safety at Work Act 1996, which was not raised by the respondent.
 8. The appellant submitted that the tribunal’s conclusion is against the weight of evidence, and that the tribunal did not give reasons for the evidence it accepted or rejected. The appellant says that the tribunal failed to consider the contradictions in the evidence of the respondent and cited an instance concerning

an alleged meeting in which the respondent's evidence is not consistent with the evidence given by Pooja, the respondent in ERCA 13 of 2019. The appellant submits that there was no basis upon which to award three months wages as compensation as the worker was not dismissed, and she had kept away from work on her own and did not respond to calls to return to work.

9. The respondent submitted that she was asked to terminate the services of another employee, Pooja as she was pregnant. This was after she told an employee of the appellant, Aggie, that Pooja could not lift heavy things due to her pregnancy. The respondent submitted that the nature of the work assigned to Pooja posed a health risk to her. The respondent's contention is that she was summarily dismissed as she did not participate in terminating Pooja's employment.
10. The transcript of evidence led before the tribunal is not recorded in the clearest terms. The appellant's evidence is that the respondent left her job, and did not respond to telephone calls. The appellant says that the respondent and Pooja, the respondent in ERCA 13 of 2019, wanted the sales person, Aggie to be dismissed because of differences with her, but the appellant did not comply with the demand to dismiss her.
11. Akanisi Vunisa, who worked as a sales assistant for the appellant, said in her evidence that after Pooja and Radeshna went away, the appellant tried contacting them, but the two workers did not respond. When they returned to the shop and met the boss, they were asked to return to work. The witness denied that Mei, the general manager, instructed her to terminate the employment of the respondent and Radeshna.
12. The respondent stated in her evidence that she was asked by Mei and Aggie to inform Pooja in Hindi that she is unfit to work and to ask for her resignation. Mei had told her that pregnant staff are not recruited. When she returned the next day, she was asked to tender her resignation and leave. She said she was called and asked to give her resignation.

13. The transcript contains the evidence of the respondent and that of Pooja Archana. In her testimony, Pooja said that the respondent was dismissed because of her, by resisting the directive to terminate her employment. This is consistent with the evidence given by the respondent.
14. Form 1 by which the respondent referred her employment grievance to mediation is dated 7 November 2013. In her statement, she referred to an incident that took place on the previous day, 6 November 2013. She states that she was asked to go home, but was not given a termination letter.
15. The tribunal has chosen to believe the evidence given by the respondent. Deciding upon the credibility of the witnesses is a matter for the tribunal. It is true that the tribunal has not specified the reasons for accepting or rejecting evidence. The availability of reasons in a judicial determination is most useful to an appellate court in understanding the rationale of a court of first instance. Nevertheless, the tribunal has heard the witnesses and come to a finding. The determination shows that the most important issues have been considered in light of the evidence. Once the tribunal decided upon the credibility of witnesses and made the primary findings of fact, it was able to reach its conclusions. The tribunal's failure to consider inconsistencies will not suffice in this instance to overturn the findings.
16. The court notes that the respondent did not make reference to the Health and Safety Act 1996, although this has been considered in the tribunal's determination. The critical issue is whether the tribunal was of the opinion that the worker was dismissed. The resident magistrate has reached the conclusion that the respondent's employment was terminated and rejected the argument that she left employment on her own volition.
17. In these circumstances, the court's intervention is not warranted.

ORDER

- A. The appeal is dismissed.
- B. The appellant is to pay the respondent costs summarily assessed in the sum of \$1,000.00 within 21 days of this judgment.

Delivered at **Suva** this 4th day of **January, 2024**.



A handwritten signature in blue ink, appearing to read "M. Javed Mansoor".

M. Javed Mansoor
Judge