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# Appleby successfully appears before the Mauritius Industrial Court in its historic order of USD 3,000 as security for costs

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On 2 August 2017, the Industrial Court of Mauritius (**Industrial Court**) awarded an historic amount of MUR 100,000 [± USD 3,000] as security of costs in the case of *Alexander Van Hoeken v Africa Technical Services Ltd (Van Hoeken)*.

## Background

The Industrial Court is a special court established by the Industrial Court Act 1973, with the limited jurisdiction laid down thereunder.

One of the matters captured by its jurisdiction is the determination of employer-employee disputes under the Employment Rights Act 2008 (**ERA**). It has an obligation to first endeavour to drive the parties to an amicable settlement because the dispute concerns an employee's livelihood. In the event that its efforts are not successful, the Industrial Court must then proceed to determine the substantive application lodged before it.

The case of *Van Hoeken* concerns a claim by a Dutch national for unjustified termination of employment in the amount of USD 1,345,714. The claim is challenged by the defendant mainly on the premise that the wrong entity is being sued as the 'employer' which is defined by the ERA as the person who employs another and is responsible for the payment of remuneration.

## The Law

The relevance of security for costs in the *Van Hoeken* case arises by reason of (i) Article 21 of the Mauritian Civil Code (**Civil Code**) (ii) Article 166 of the Mauritian Code of Civil Procedure (**Code of Civil Procedure**) and, (iii) Section 110 of the Courts Act 1945.

Insofar as they are relevant to the *Van Hoeken* case, the combined effect of the aforementioned pieces of legislation is that as a foreign national, the plaintiff is bound to provide security for costs towards the payment of '*les frais de dommages et intérêts*' (i.e. costs of damages and interests) that he may have to pay from the action that he lodged before the Industrial Court because the defendant has claimed it.

The only exception admitted under the Code of Civil Procedure is where the foreigner establishes that he owns property in Mauritius. In the *Van Hoeken* case the plaintiff did not invoke the exception as he confirmed that he did not own property in Mauritius.

## The Meaning of 'Frais de Dommages et Intérêts'

The Supreme Court of Mauritius (**Supreme Court**) filled the legal void that arose following the absence of a definition of the phrase '*frais de dommages et intérêts*' by the Civil Code and the Code of Civil Procedure.

Accordingly, in *Al Rawas I.S.A.A. v Pegasus Energy Limited & Ors 2006 SCJ 274 (Al Rawas)*,

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the Supreme Court brought clarity to the concept as follows:

- **Frais:** denotes costs and includes all necessary expenses that a respondent has had to incur to resist the plaintiff's action. This captures items such as lawyers' fees, registration fees of documents to be produced, travel and accommodation expenses of witnesses having to travel in Mauritius and
- **Dommages et Intérêts:** denotes damages resulting from '*clearly vexatious litigious and abusive legal process*'. However, it excludes damages which may be awarded against a plaintiff/applicant in any cross action brought against him.

The Supreme Court reiterated the principle that the assessment of the amount to be awarded as security for costs, was an exercise of judicial discretion to ensure '*that the ends of justice are met*'. It went further by confirming that the Mauritian courts followed English practice on this issue.

### Commercial Impact of the Industrial Court Decision

The decision of the Industrial Court in the *Van Hoeken* case is an important decision in two respects. First, it highlights the readiness of the Industrial Court to adjust to the changed employment landscape which now accommodates an increasing number of foreign employees at all levels within the hierarchy of an enterprise and uphold their rights under the ERA or Mauritius law generally. Secondly, against this widened employment landscape, this decision reflects a conscious effort by the Industrial Court to balance the equally important right of employers to be guarded against the risks of what may turn out to be non-meritorious employment claims.

In terms of Mauritius law procedure, now that the industrial Court has ordered the award of security for costs, it may now proceed to hear the substantive application.

Appleby appeared for the defendant in the *Van Hoeken* case and was represented by Sharmilla Bhima (Counsel) and Dushyant Ramdhur (Senior Associate).

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## Experts Involved



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