THE LEGAL TAPE

The Newsletter of the Mauritius Bar Association

Issue 03 | April 2022

An initiative of the Young Bar Committee

TABLE OF CONTENTS

Message from the Chairperson of the Bar Council

Dear Colleagues,

It is always a pleasure to communicate with the profession. "The Legal Tape", the newsletter of the Mauritius Bar Association, has now become a regular feature and this is an achievement which we should all be proud of. I thank the profession for the trust it placed in members of the Council and myself for two consecutive years. We have come a long way and we have a long way to go. With your support and collaboration, we are looking forward to a fruitful and constructive year ahead. It is the motto of the Council that it should remain close to members of the profession, listen to their grievances, take corrective measures and communicate with them on a regular basis. We are grateful for the support we receive from almost all the major stakeholders. The Council also faces obstacles but has resolved to go ahead with its relentless task of working for the benefit of all members of the profession.

Members of the profession are already aware of the work done by the Council over the past year. Once we assumed office this year, we proposed to the Institute for Judicial and Legal Studies to lower the CPD fees for Barristers having from 5 to 10 years standing at the Bar. Unfortunately, the Institute turned down our request mentioning financial constraints. Incidentally, the role of the Institute is not only to run CPD courses and courses for prospective Barristers. One of the prime objectives of the Institute in that it should run courses for prospective judicial and legal officers is not being met. The Council has raised the matter with the concerned authorities and it hopes that corrective measures are taken. The Council is currently working with insurance companies with a view to the setting up of a pension plan for Barristers, especially for those in private practice. We have already organized three networking events, one being with Barristers working in the corporate sector, whom we rarely interact with but who are also full-fledged members of the MBA; the other with the new callees and the third one with the profession in general. The Council held constructive meetings with the Hon.Chief Justice, the Ag Master and Registrar and the Deputy Master & Registrar concerning certain practical difficulties being faced by Barristers in the exercise of their functions. A communiqué was issued by the Council to that effect on the 16th of March, 2022.

The Council is currently working closely with the Attorney General's Office on a Bill which, if enacted, will replace the Mauritius Bar Association Act which dates back to 1957. Colleagues will surely agree that the law as it stands no longer caters for the changing needs of the profession. The Council is also of the view that certain police practices are outdated and not in line with best practices. Time has also come for the setting up of a Court of Appeal, separate from the Supreme Court. On both issues, the Council has made recommendations to Government. There are a number of activities that we plan to organize this year like a Bar Dinner, the Football Tournament, Blood Donation and Mountain Hike, to mention a few. I sincerely hope we can rely on the participation of as many members of the profession as practically possible. The Council is striving hard to have and maintain a strong, independent and inclusive Bar, essential in a vibrant democracy but which cannot be achieved without the support and collaboration of one and all.

It has been brought to the attention of the Council that some Barristers are resorting to shameful activities like touting to promote themselves professionally. This matter is being taken very seriously and the Council will leave no stone unturned to address this issue. Lastly, I strongly urge members of the profession to contribute to this newsletter. A special note of thanks goes to the Secretary of the Bar Council and members of the Editorial Team who work very hard to make this project a reality.

Yatin Varma
Chairperson
Mauritius Bar Council

Bar Council Members

Yaitn Varma
Chairperson

Mayuri Bunwaree-Ramlackhan
Secretary

Hisham Oozeer
Treasurer

Mrina Luchman
Member

Avineshwar Dayal
Member

Tawheen Choomka
Member

Bishan Ramdenee
Member

Dinay Reetoo
Co-opted Member (AGO)

Bhavna Bhagwan
Co-opted Member (ODPP)

Message from the Editorial Team

Curieuse expression que celle-ci, chers collègues. Si l'adage « jamais deux sans trois » semble souvent se vérifier, il n'est nul besoin de written submissions pour démontrer que deux évènements ne conduisent pas toujours à un troisième. Sauf à dire que la survenue de ce dernier n'est qu'une question de temps, hypothèse inquiétante quand on considère alors les guerres mondiales ou encore les confinements en temps de pandémie. Heureusement, une autre interprétation de cette expression existe. « Jamais deux sans trois » trouverait son origine d'un proverbe français du XIIIème siècle, « tierce fois, c'est droit ». Ce qui signifiait qu'une action, pour qu'elle soit totalement réussie, devait être entreprise au moins trois fois. La traduction anglaise serait alors plus proche de « practice makes perfect » que de « third time lucky » ! Voilà qui sied mieux à l'état d'esprit de l'équipe éditoriale de Legal Tape pour ce troisième numéro. Né des conditions particulières du confinement, le bulletin d'informations de notre profession visait à permettre la circulation des idées parmi les avocats et le maintien des liens fraternels qui nous unissent, même en temps de distanciation sociale et de restrictions sanitaires. Lors des deux premières éditions, la réussite de Legal Tape fut ainsi étroitement liée au confinement. Dans ce moment difficile pour le pays et pour notre profession, certains d'entre nous ont mis à profit leur temps libre pour écrire des textes et partager leurs idées. Ce faisant, ils ont donné vie à Legal Tape, dont une des forces principales a été de créer un pont entre les générations. Articles érudits, textes légers, quiz, photos - voilà la recette de notre bulletin désormais établie. Ce troisième numéro entend poursuivre cette approche et inscrire définitivement le Legal Tape dans les petites habitudes de Barreau mauricien. Mais pour cela, il nous faudra encore de vos textes, de vos commentaires et de votre soutien. Alors, jamais trois sans quatre ? A vous de jouer.

Mrs Narghis Bundhun, SC

Mr Nabil Moolna

Ms Kamlesh Domah (AGO)

Ms Anusha Aubeelack (ODPP)

Message from The YBC

Dear Members,

I am deeply honoured to introduce the YBC 2022 and its objectives for this year.

I am the Chairperson of the YBC and my team consists of: Pallavi Ramdhian, Hanna Sayed-Hossen, Pooja Bhayro, Derek Lo Fan Hin, Mathieu Marie Joseph, Taroon Ramtale, Khavi Chetty and Kurshvin Ragavoodoo.

The YBC is an ad hoc committee set up to bridge the gap between young barristers and the Bar Council. The YBC also organises events for the whole profession under the guidance and supervision of the Bar Council. Our aim is to solidify the relationship between barristers, improve the communication among the profession as a whole and rekindle the ties of brotherhood. We believe that a bar that is on speaking terms is a bar that can work more efficiently and this, in the interests of justice.

We wanted to set the tone for this year by bringing the MBA to the top of the highest mountain of Mauritius on Independence Day. Unfortunately, given the prevailing bad weather, we had to review our plans and postpone the mountain hike at Piton de la Petite Rivière Noire to a later date. We were quite pleased with the interest shown by the members of the profession for the event. Rest assured, it will be done. We will inform you of the new date set in due course.

The YBC 2022 has much in store for you this year. We hope to see you in great numbers at our events.

Yours sincerely,

Ludovic Balancy
Chairperson of the YBC

La Toge, Est-Elle Libre?

Philippe G-Olivier BARBE

" La liberté est le droit de faire tout ce que les lois permettent"
– Montesquieu

Après les récents évènements qui ont causé un certain remous au sein de la profession légale, je me suis posé la question citée en rubrique. Évidemment, sans la loi et les normes, plus personne ne serait libre car tout le monde ferait ce que bon lui semble sans règle commune. Si la liberté évolue dans une société sans loi ni norme, ce serait l'anarchie et l'essence même de la liberté serait compromise.

Me référant à Montesquieu, la liberté est tributaire de la loi. Dans les années quatre-vingts, le gouvernement britannique sous la houlette de Mme. Margaret Thatcher avait menacé de toucher au fonctionnement de la profession légale mais le barreau anglais est monté au créneau, en disant *"qu'un pouvoir judiciaire indépendant est l'un des fondements de la démocratie britannique et que* ***l'indépendance du judiciaire ne peut survivre en l'absence d'un barreau autonome"***. N'importe quand, le parlement peut passer une loi pour changer le fonctionnement du barreau, qui peut même toucher à la liberté de la toge. Nous avons perpétuellement une Épée de Damoclès sur la tête… En sus de cela, les membres du barreau doivent aussi évoluer dans les paramètres du code d'éthique ; des exemples de restriction de notre liberté sont l'interdiction d'avoir une double profession dans certains cas et sur la méthode de faire de la publicité.

En parlant de la liberté, on doit aussi parler de la responsabilité que cela implique. L'étiquette que doit respecter un avocat est synonyme de la responsabilité envers la profession. Il faut aussi noter qu'un avocat n'est pas avocat seulement au prétoire mais aussi dans la vie de tous les jours au sein de la société. L'avocat ne peut se comporter comme bon lui semble dans le quotidien malgré qu'il ne soit pas en fonction car il a un devoir, voire une obligation de respecter l'étiquette de la profession. L'arrêt, *"D. Hurnam, A Barrister"* **(2001 SCJ 79)**, illustre cette obligation et démontre aussi que le non-respect de l'étiquette et du code d'éthique peut même jusqu'à coûter à l'avocat sa toge.

Montesquieu pousse un peu plus loin sa pensée sur la loi, en disant : *"Une chose n'est pas juste parce qu'elle est loi mais elle doit être loi parce qu'elle est juste".*

Il parle là de la justesse de la loi. Cependant, la justesse de la loi dépend de l'interprétation qu'on lui donne ; interprétation qui peut évoluer avec le temps et aussi par rapport à l'évolution de la société. Certaines lois qui, jadis, étaient adaptées à la société pourraient ne plus avoir la même pertinence dans la société contemporaine et vice versa. Prenant comme exemple la restriction sur la publicité comme mentionné ci-dessus, certains pays qui étaient très rigides auparavant ont commencé à assouplir leurs lois ; je prendrai comme référence un article paru dans le *" Arizona Journal of International and Comparative Law - Vol 20, No. 2"* pour illustrer l'évolution de la loi régissant les membres du barreau :

"Publicity rules promulgated by the individual bars and Law Societies of the UK vary considerably in both breadth and scope. While there has been ***significant change to the communication rules of some UK legal professions to date, review and revision of these regulatory measures will likely continue.*** *Although not exclusively the case, the tide of change among the legal professions' publicity rules is one of liberalization and simplicity. Using the revised CCBE Code and the Solicitors' Publicity Code for England and Wales 2001 as an illustration, a workable approach seems to be that if a communication is not false or misleading, it should be allowed.*

With increased use of electronic communications, cross-border practice, and changes to the CCBE Code, the legal professions of the UK need to harmonize their standards. A uniform and simplistic approach to lawyer advertising is important to the legal professions in the UK and throughout the EU, since lawyers engaging in international practice currently are bound to both home-state and host-state rules. Ideally, the various legal professions should harmonize their publicity rules applicable to lawyers. If this is not possible, the professions should at least defer

one state's publicity rules to that of another. With de-emphasized borders and open communications, both the legal professions and the public at large are best served by parallel standards, which give consumers access to available information that is accurate and not misleading".

Il est évident que les changements causés par la technologie dans le monde auront un impact significatif sur le fonctionnement des avocats ; par conséquent, certaines lois auront à être amendées pour permettre à l'avocat de pratiquer en harmonie avec la transformation de la société mais tout en respectant l'étiquette et s'assurer que la profession garde ses lettres de noblesse.

Nonobstant les restrictions de la loi, du code d'éthique et de l'étiquette, je pense humblement que la toge jouit d'une liberté relative et évolutive mais la liberté n'est jamais un acquis. Je citerai donc l'ancien Président de la République française, Jacques Chirac : *"La liberté n'est pas un merveilleux privilège que l'on a une fois pour toutes. C'est un bien difficile à conquérir, une plante menacée qu'il faut perpétuellement protéger et défendre."*

The "Other Confinement" : Breaking Barriers


Rati Gujadhur & Kurshvin Ragavoodoo

"Injustice anywhere is a threat to injustice everywhere"
– Martin Luther King Jr.

A Brief Overview of the Law

Although we live in a democracy which can be praised for providing accessibility to justice to all of its citizens, the LGBTQIA+ (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual) community of Mauritius seems to be let down by our legal justice system. Our current domestic laws do not specifically prohibit same-sex relationships, however the existence of a colonial law, which is still in force, under section 250 of our Criminal Code which dates back to 1838, suggests otherwise.

Section 250 of our Criminal Code criminalises sodomy and provides for a punishment of up to 5 years of penal servitude. It is to be noted that sodomy is one form of sex between two gay men. As such, the mere existence of this law denies gay men the right to sex even when the act is consensual. Therefore, the existence of this law remains a crucial obstacle to overcome in order to establish a legal framework aimed at protecting the LGBTQIA+ community in Mauritius.

Even though the relevance of this law is at the heart of the battle of the LGBTQIA+ community against our legal justice system, there are some remedies which LGBTQIA+ can currently seek under our laws

- **Under section 3 of our Constitution** which provides for the protection of fundamental rights and freedoms of individuals. As such, the existence of section 250 of our Criminal Code may well be in contradiction with our Constitution;

- **Under our Equal Opportunities Act 2008 (section 2** defines sexual orientation as "homosexuality (including lesbianism), bisexuality or heterosexuality" in the list of what would be considered as "status"), and under **Part III** of the same Act, it goes without saying, that, it is prohibited to discriminate against someone who is seeking employment on the basis of "status". Simply put, a LGBTQIA+ individual must not be refused employment on the basis of their sexual orientation;

- **Under section 3 of the Code of Ethics for Public (Officers)**, public officers are required to treat the public and their colleagues without any discrimination based on sexual orientation; and

- **Under section 5(1) (a) of the Workers' Rights Act 2019** provides that "No employer shall treat, in a discriminatory manner any worker who is in his employment." It is worth noting that **section 5(5) of the Workers' Rights Act 2019**, includes discrimination based on sexual orientation.

As highlighted above, there are remedies which may be sought under our laws for LGBTQIA+ individuals facing discrimination. However, there seems to be an important lack of trust from the LGBTQIA+ community towards our legal justice system. This could be due to the lack of importance given to their protection and evidently the existence of section 250 of the Criminal Code.

The Elephant in the Room - Section 250 of the Criminal Code

The relevance of a blanket criminalisation of consensual anal sex irrespective of its application to the LGBTQIA+ or the heterosexual community is seriously being questioned nowadays. This outdated law places a heavy toll on the LGBTQIA+ community who is the most prejudiced and discriminated by this law.

As highlighted above, our Constitution provides for protection of fundamental rights and freedom of individual, thus the mere existence of Section 250 sheds light on the contradiction in our laws. Section 250 concerns one form of sex which gay men practise, and this is of relevance to their private lives, the Constitution explicitly states that an individual has the right to life, liberty, security of the person and the protection of the law. The question, which therefore arises, is: why is section 250, as it is, is still present in our laws? Surely it is not for the State to monitor the sexual practices of consenting private individuals. We do believe that should this be the case, it would be tantamount to a disproportionate invasion of the State in the private life of individuals.

When two persons of age have both consented to an act, which is prohibited under section 250 of the Criminal Code of Mauritius, it is hard to fathom what kind of protection section 250 is trying to bring to the Mauritian Citizen. Only if the said criminalised act were done without consent would it afford protection to the victim of the said act of sodomy.

However, the present state in which section 250 is being applied in Mauritius is causing more harm to the LGBTQIA+ community insofar as they are at a perpetual risk of being prosecuted for indulging into consensual same-sex sexual relations, such as sodomy, an act which they fully consent to but yet remains criminalised under our domestic laws.

We hope that one day in a not-so-distant future, our grandchildren will come across this article and they will wonder how, in 2021, the criminalisation of consensual same-sex relations (sodomy) between adults was a stark reality.

Roadmap into the welcoming arms of Justice

Broadly speaking, the Police have a duty to record your declaration in the Occurrence Book and if your declaration discloses an offence known to law, the police officer on duty will also take a written statement from you about the facts and circumstances of your complaint. Usually all police officers on duty would record your declaration in the Occurrence Book. However, should you one day be faced with the situation where having explained why you wish to make a declaration (e.g. being victim of insult, verbal threats, assault) to the police officers on duty at a police station found in whatever locality of Mauritius and the said police officer refuses to record your declaration due to your Sexual Orientation, this is not the end of the matter.

You can report the matter to the Independent Police Complaints Commission (the 'IPCC') In your declaration to the Independent Police Complaints Commission, you can also mention the date, the approximate time and the name of the police station you attended[1].

Let us imagine a hypothetical situation where you have been employed for seven years as a waiter and one day the head waiter retires. The job of head waiter is advertised amongst you and five other waiters. The minimum requirement is having worked as a waiter for at least five years. You decide to apply for the said post of Head Waiter and the five other waiters who also have at least five years of experience as you decide to apply as well. All your five colleagues (waiters) are conveyed for an interview and you are not even conveyed for the interview. What avenue is open to you should you feel that you have been singled out by your employer due to your sexual orientation?

You can lodge a formal written complaint before the Equal Opportunities Commission[2] who will then investigate into your complaint. When you are lodging a complaint before the Equal Opportunities Commission, make sure to give a detailed account of the alleged act of discrimination. (You can give reasons as to why you feel that there has been an alleged act of discrimination against you)

---

[1] The Independent Police Complaints Commission is situated at 4th Floor, Emmanuel Anquetil Building, SSR Street, Port Louis and you may as a citizen of the Republic of Mauritius contact them on the following phone number: 260 0513.

[2] The Equal Opportunities Commission is situated at 1st Floor, Belmont House, Intendance Street Port-Louis and you may contact The Equal Opportunities Commission on 201 1074/2013502.

On another note, in Mauritius until and unless the contrary is proved, nothing expressly prohibits a marriage between persons of the same sex. Article 212 of the Civil Code reads as follows: "Les époux se doivent mutuellement fidélité, secours, assistance". The term "les époux" have not yet been expressly defined here. This is also based on the reasoning that that prohibitions to marriage as laid out in Articles 151,152 and 153 of the Code Civil Mauricien do not prohibit marriage between person of the same sex. It may, therefore, be theoretically possible that two persons of the same sex celebrate their civil union in Mauritius. As at now, there are no known cases where two persons of the same sex have applied for the publication of their proposed civil marriage at the Registrar of Civil Status, we cannot pronounce ourselves further on this issue. In the event that there has been an objection to this proposed civil marriage and the Registrar of Civil Status upholds this objection in its decision, the parties may still apply to the Judge in Chambers for an order to quash the decision of Registrar of Civil Status.

The hope still prevails that should such a hypothetical situation arise in Mauritius, the implication and impact of a favourable decision in this matter would be far-reaching and could be considered as a quantum leap in the vindication of the rights of the LGBTQIA+ community.

This article was written solely for informational purposes on fictitious scenarios and should not be construed as legal advice. Should you require legal advice, please contact counsel of your choice.

"Honestly Madam, do you expect this court to believe that *all* of your husbands mysteriously disappeared at this same time in November?"

The Plea in Limine Litis: The Defendant's Gain, The Plaintiff's Pain?

Jai Prashanth Poinoosawmy*

'Courts are not above criticism. Legal commentators, the media, academics, and members of the public criticize judgments and court rulings on an almost daily basis. In that sense, courts can rightly claim that they are constantly held up to public account. No judge, indeed, no person, whatever his or her station is above scrutiny.' Minister of Cooperative Governance & Traditional Affairs v De Beer & Anor [2021] ZASCA 95, [118].

INTRODUCTION

On 31 January 2022, the Supreme Court of Mauritius handed down its judgment in Oumaduthsingh v Rehm Grinaker Construction Co Ltd[3] ("Oumaduthsingh") – a case which concerned arguments on a plea in limine ("PIL"). By way of background, the plaintiff had been recruited by the defendant's subcontractor to work as a labourer at a construction site. Unfortunately, he encountered an accident at work, as a result of which he suffered serious injuries. The plaintiff sued the defendant in tort seeking damages for its alleged failure, among other things, to provide a safe and proper system of work. The defendant raised a PIL in that the plaintiff could not proceed with his claim as it was time-barred and it offended le principe du non-cumul des responsabilités.

Judge Goordyal-Chittoo held that the claim was not time-barred – the operative date was the date of filing and not service of the plaint. However, the defendant succeeded on the second limb of its PIL. Finding the claim to have been grounded in both tort and contract, the Judge relied on Sotramon[4] and non-suited the plaintiff, this despite the latter succeeding on the issue of prescription.

* I wish to thank Praveena Katwaroo, Rakshita Ramdu, Mevindra Sunassee, and Venila Parsooramen for their helpful comments. All errors remain that of the author.

[3] [2022] SCJ 41

[4] *Mediterranean Shipping Company v Sotramon Ltd* [2015] PRV 105.

The failure to comply with le principe du non-cumul tilted the scales in favour of the defendant.

But was the Judge correct in non-suiting the plaintiff? And, on a more fundamental note, does upholding a PIL automatically lead to a dismissal of the plaint or to the plaintiff being non-suited? In this article, I will argue that both questions should be answered in the negative.

This article is divided into three sections. Section 1 will briefly introduce, and discuss the purpose(s) of, a PIL. Section 2 will then analyse the judgment of Oumaduthsingh. Given the nature of our judicial system, I will advocate for a degree of latitude that the courts ought to exercise when adjudicating upon a PIL. Finally, in Section 3, I will demonstrate, through a fictional scenario, why a defendant's success on a PIL is not a foregone conclusion which invariably leads to a dismissal or a non-suit.

SECTION 1: THE PLEA IN LIMINE

1.1 The PIL Defined

Put simply, a PIL is a preliminary objection on a point of law.[5]

Firstly, it is preliminary because – in conformity with the Latin expression in limine, meaning 'immediately before the commencement of the legal case'[6] – a PIL is usually raised (and argued) before the trial, and it precedes the plea on the merits.[7] Here, the word "usually" is key. Indeed, there is no bar to the defendant providing his plea on the merits at the time when he raises a PIL, but caution should be exercised when jurisdiction is disputed.[8] Moreover, the defendant is not precluded from raising a PIL even after the pleadings have been exchanged inasmuch as a defence in law can be taken at any stage of the proceedings before judgment.[9] But to do so, the defendant will need to move to amend to his plea.[10] As such, the principles governing the amendment of pleadings will apply, and one of the fundamental questions for the court will be whether or not the proposed amendment will cause injustice to the plaintiff. As a general rule of thumb, if the trial has yet to commence the plaintiff will not suffer any prejudice, but ultimately this is a question of fact for the court, taking into account the individual circumstances of the case.[11]

Secondly, a PIL is an objection because if upheld, by virtue of rule 34[12] or section 17(1)(c)[13] the court will either dismiss the claim or, as in Oumaduthsingh, non-suit the plaintiff, which permits the latter to elect for a dismissal and appeal[14] or to start afresh by instituting new proceedings (however see Section 2).[15]

Thirdly, it is an objection in law as the court is not concerned with the substantive issues arising in the claim. In Rama, Simmons J held that when the defendant raises a PIL, he accepts for the purposes of argument only the facts alleged by the plaintiff in his plaint; however, he objects to the claim progressing onto the merits as it is wrong in law[16] . Further, 'where the objection is based on disputed facts […] the objection cannot be taken in limine'.[17] However, in Avigo it was held that 'the production of a significantly limited amount of evidence' is permitted.[18] It should be emphasised that Avigo does not overrule Rama, and the two cases can be reconciled. As a principle of law, a PIL must ordinarily be argued on the pleadings alone. Avigo merely accounts for those cases where evidence may be required to decide the fate of a PIL.[19] Having defined a PIL, let us now turn to its purpose(s) in the context of litigation.

1.2 Purpose(s) of the PIL

Judge Balancy and Judge Oh San-Bellepeau opined that: '[p]oints which are more appropriately raised in limine are those which […] could dispose of the case and avoid protracted hearing of the whole evidence'.[20] Therefore, the PIL serves an important administrative function. It catches and disposes of defective claims, thus preventing the judicial system from being clogged up with same so that the courts can devote their limited time and resources to those cases that can properly be argued on the merits. In addition, by filtering claims at an early stage of the proceedings, a PIL also prevents the parties from going through the whole gamut of court process, saving them time and unnecessary expenses in trying issues of fact.[21] However, the PIL is also a powerful tool in the defendant's artillery. Used strategically, a PIL can protract matters[22] or even exert considerable pressure on the plaintiff for the consequences are terrible if he is unsuccessful. As in Mr Oumaduthsingh's case, a plaintiff would have journeyed on for years and weathered the storms, only to find his claim into the gutters, without a single word having been uttered on the substantive issues (see Section 2.3)!

---

[5] I believe that any attempt to distinguish preliminary objections (/objections/any other term used to describe an objection in law) from a PIL serves no purpose. Those terms could be used interchangeably, but to differentiate them without offering any reasonable explanation of how they differ from one another, is futile and confuses rather than clarifies.

[6] A Fellmeth and M Horwitz, *Guide to Latin in International Law* (OUP 2009).

[7] *Avigo Capital Managers PVT Ltd v Avigo Venture Investments Ltd* [2019] SCJ 158, [11].

[8] See *Airworld Limited v Malaysian Airline System Berhad* [2012] SCJ 29; *Clambrassil Co Ltd & Anor v Copex Management Services & Ors* [2012] SCJ 192; *Hurnam v Caunhye & Anor* [2015] INT 26; *Hewlett-Packard International Trade v Happy World Ltd* [2017] SCJ 324; and *Ramgoolam v The State of Mauritius & Anor* [2020] SCJ 91.

[9] See *Gujadhur v Deerpalsing* [2008] SCJ 109; *Koodruth v Absa Bank Ltd & Ors* [2021] SCJ 111; *Chady v Habib Bank* [2018] SCJ 363; and *Ramdewar v The State of Mauritius* [2021] INT 144.

[10] *Jhugaroo v CIM Global Business Ltd* [2017] IND 21; *Earl Seymour v Hassamal* [2014] SCJ 291; *Maigrot v The State of Mauritius & Anor* [2015] SCJ 418; *Lesage & Anor v The Minister of Education, Science and Technology & Anor* [2004] SCJ 242; *Chady v Veeramundar & Ors* [2021] SCJ 376.

[11] See *Bawamia v Tranquille & Ors* [2013] SCJ 237; *Hurnam v The Commissioner of Police* [2014] SCJ 87; *Food Paradise Co Ltd v Shabs Ltd & Anor* [2021] INT 92; *Compagnie des Magasins Populaires Limitee v The Government of Mauritius & Anor* [2012] SCJ 200; *Motah v Langut & Anor* [2016] INT 69; and *Bomeubles & Anor v UHY Advisory Ltd & Anor* [2021] SCJ 361.

[12] The Supreme Court Rules 2000.

[13] The District and Intermediate Courts (Civil Jurisdiction) Act 1888. See also rule 95 of District, Industrial and Intermediate Courts Rules.

[14] *Maudhoo v Chuttoo & Anor* [2004] SCJ 230, page 4.

[15] *Daby Ritoodoise v The State of Mauritius* [2007] PRV 41, [29].

[16] *Rama v Vacoas Transport Co Ltd* [1958] MR 184; See also Société United Docks v The Government of Mauritius [1981] MR 500.

[17] ibid.

[18] *Avigo* (n5) [11].

[19] See *Treebhoohun v Mon Ile Luxury Come Ltee & Anor* [2018] SCJ 134; and *Treebhoohun v Mon Ile Luxury Come Ltee & Anor* [2019] SCJ 334.

[20] *Avigo* (n5) [11] (my emphasis).

[21] *Hurnam v Caunhye & Anor* [2015] INT 26, page 4.

[22] See *Phoenix Knitting Ltd v The Development Bank of Mauritius Ltd & Ors* [2011] SCJ 196.

Therefore, notwithstanding the benefits, bearing in mind that the defendant can raise a PIL at practically any stage of the proceedings, and taking into account the consequences for the plaintiff if he is unsuccessful, can it be said that a PIL is pro-defendant? In other words, does it unduly favour the defendant at the expense of the plaintiff? This brings me to the decision in Oumaduthsingh.

SECTION 2: OUMADUTHSINGH ANALYSED

2.1 Dismissal vs Non-suit

In Oumaduthsingh, with the defendant succeeding on the issue of non-cumul, Judge Goordyal-Chittoo exercised her discretion under rule 34 and non-suited the plaintiff. Perhaps the Judge believed that a dismissal would be too harsh an outcome, tantamount to permitting the 'defendant [to win] on a technicality, or something like a technicality, if the claim were dismissed'.[23] However, the sentence: 'in line with the pronouncement of the Judicial Committee of the Privy Council in the case of Sotramon, [...] I non-suit the plaintiff'[24] seems more than coincidental. A whiff of familiarity which does not go unnoticed, as it appears that non-suiting a plaintiff for a breach of non-cumul has now crystallised into a practice![25] But if there ever were such a practice it is uncalled for as it does not emanate from Sotramon.[26] Further, to show subservience to it regrettably overlooks the individual circumstances of the case, as was done in Oumaduthsingh, and fails to recognise that, in relation to a PIL, a non-suit would – for the reasons below – have the same effect as a dismissal of the plaint.

Firstly, except in certain cases,[27] the principle of res judicata does not apply when a PIL is upheld. In England – where non-suit is obsolete – the White Book states that: 'the principle of res judicata […] does not apply where proceedings terminated prematurely, without any substantive adjudication or settlement'.[28] Indeed, dismissing the claim on the basis of a PIL is a premature termination of the proceedings, without the court having heard or decided the merits of the claim. Therefore, regardless of whether the court orders a non-suit or a dismissal, the plaintiff is not precluded from starting afresh by entering a new claim on the same cause of action.[29]

Secondly, the idea of non-suiting as an act of indulgence, in that it provides the plaintiff with the option to either dismiss or to start anew is a sheer fallacy. As it has been shown, a dismissal does not trigger the principle of res judicata so irrespective of the outcome, the plaintiff only possesses two options, i.e., to appeal and hope that the judgment is overturned or to remedy the defect and institute new proceedings.

Thirdly, a non-suit does not interrupt the prescription period. Whether a non-suit corresponds to un désistement d'instance is arguable,[30] however in Ramdenee, Judge Lallah and Judge Lam Shang Leen held that it was wrong to construe an earlier judgment non-suiting the plaintiffs as interrupting the prescriptive period.[31] In so holding, the court acceded to the defendants' PIL that the new action entered by the plaintiffs was time-barred.[32] As such, whether a court dismisses the plaint[33] or non-suits the plaintiff, any new claim could be subject to the defence of prescription – the original action would not suspend the prescriptive period.

As a result, Judge Goordyal-Chittoo could have dismissed the claim as much as she decided to non-suit Mr Oumaduthsingh – both outcomes would have had the same consequences. But this begs the question of where this leaves Mr Oumaduthsingh.

2.2 The Doors (Permanently) Closed?

Oumaduthsingh was a peculiar case. The cause of action arose on 20 June 2007, and to his detriment, the plaintiff only found it fit to lodge a claim three days before the ten-year prescription delay. While the claim was not time-barred, by the time the judgment was handed down, it certainly was.

Notwithstanding what has been discussed hitherto (see Section 2.1), Judge Goordyal-Chittoo did not intend to close the doors to the plaintiff, hence why she ordered

[23] *Daby* (n13) [29].
[24] *Oumaduthsingh* (n1) page 4 (my emphasis).
[25] Following the Judicial Committee's decision in *Sotramon*, at the time of writing, a total of 32 judgments have been handed down where the defendant raised a PIL for a breach of *non-cumul*. In 15 cases, the PIL was set aside either because it was premature or because the court found no such breach. In the remaining 17 cases, the PIL was upheld, and of those, 12 resulted in the plaintiff being non-suited. The 5 cases where a non-suit was not ordered, are exceptions rather than the norm – see for example *Hunooman v Sun Insurance Co Ltd & Ors* [2018] SCJ 220; *Bengraz v The State of Mauritius & Ors* [2019] SCJ 322; and *Sahai v The Ministry of Education and Human Resources, Tertiary Education & Scientific Research & Ors* [2019] RDR 8. Hence why it is concluded that non-suiting a plaintiff for a breach of *non-cumul* has crystallised into a practice.
[26] Although Lord Toulson 'restore[d] the order made by Matadeen J', this should not be seen as an affirmation, implicit or explicit, by the JCPC that a breach of non-cumul warrants a non-suit.
[27] mThis would include cases where upholding a PIL disposes of the action finally so that the plaintiff is precluded form starting anew. For example, a PIL that the claim is time-barred or a PIL in relation to State proceedings.
[28] The White Book, Volume 1, Commentary 3.4.3.2 at page 87 (Sweet & Maxwell 2019) (my emphasis).
[29] See *Costantin v Jhuboo* [2016] SCJ 500, page 9.
[30] See *Ramgoolam v Gaffoor* [1949] MR 217, pages 2-4; and *Parahoo & Anor v Rama & Ors* [1970] SCJ 131, page 3.
[31] *Ramdenee & Ors v Radhay & Ors* [1995] SCJ 220.
[32] ibid.
[33] See Article 2247 of the Code Civile Mauricien.

a non-suit. However, taking into account the facts of Oumaduthsingh, she unfortunately did. Blinded by a 'practice', the Judge failed to appreciate whether a non-suit would interrupt the prescriptive period and whether that could preclude Mr Oumaduthsingh from coming before the courts again. It is rather telling that the Judge did not pay heed to the Judicial Committee's decision in Daby, where Lord Walker mentioned that:

[i]f a judge makes an order non-suiting a plaintiff the result is that the plaintiff obtains no relief, but is at liberty to commence other proceedings based on the same cause of action, provided that it has not become statute-barred (or liable to be defeated by some other subsequent event, such as a change of position). Non-suit is therefore in the nature of an indulgence to the plaintiff, who is given the opportunity (subject to statutes of limitation) to start afresh.[34]

(In fact, it is even more telling that Lord Walker found it necessary to refer to limitation twice!)

In Oumaduthsingh, the prescriptive period matured on 19 June 2017. This, however, did not apply to the original proceedings as the claim was lodged within the ten-year delay, so any defence on prescription would only extend to future proceedings. Moreover, while the Judge's order inadvertently debarred the plaintiff, it should also be recognised that, as per Article 2223 of the Code Civile Mauricien, the Judge could not consider d'office the question of prescription in relation to future proceedings as this would have interfered with the defendant's right to raise or waive the defence of prescription.[35] And if the Judge had done so and/or made an order to that effect she would have acted ultra petita[36] Significantly, there is nothing in the judgment to suggest that the defendant has waived its right in anticipation. Therefore, should the plaintiff elect to start anew, the defendant could simply raise a PIL to the effect that the action is now time-barred. In that sense, there is a dilemma. On the one hand, the Judge could not pronounce herself on an eventual defence of prescription, and on the other hand, the doors are now permanently shut to the plaintiff as any new action would be time-barred.

2.3 Oumaduthsingh and Beyond – A New Approach?

In light of our judicial system, Oumaduthsingh represents an unwelcome precedent. It is self-evident that the judicial process is slow. It takes years to overcome the procedural hurdles and the multiple postponements to take a stand or to file a pleading, amongst other things, do not help either. Common dates – when eventually agreed upon – stretch further than the exiting calendar into the new year. Five to six diaries will have been traversed before the word "trial" is tentatively inserted. And the dreaded arguments on the DOP, ATP, and DFBP unnecessarily protract matters when those pleadings do not serve much if not any purpose to litigation. Against this backdrop, it is, therefore, not uncommon for a plaintiff who has lost on a PIL to find himself outside the prescriptive period once judgment is delivered. Furthermore, while the burden of proof for a PIL rests on the defendant, he has nothing to lose, for a failure to persuade the court has no bearing on his eventual plea on the merits. By contrast, if the plaintiff is unsuccessful, the proceedings are terminated prematurely (or permanently), without the court having heard, let alone determined the substantive issues. In this context, a PIL does unduly favour the defendant, and thus, there is a need to recalibrate the scales to put both parties on an equal footing. This can be achieved by the courts exercising a degree of latitude.

In the Maxo Products v Swan Insurance Co Ltd,[37] the court cited with approval Cropper v Smith where Bowen LJ stated:

I think it is a well-established principle that the object of courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. […] I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party.

Further, in Magisson v Immobilier Conseil Marketing Ltee,[38] Judge Lam Shang Leen echoed the words of the Judicial Committee of the Privy Council in Toumany & Anor v Veerasamy[39] in that:

Mauritian courts [must] to be less technical and more flexible in their approach to jurisdictional issues and objections and, in that context, to correct mistakes and proceed to deal with substantive issues raised before it on the merits.

In the same vein in Joli v The State,[40] the Supreme Court reiterated that:

[i]t is the duty of the court to administer justice by striking a balance between the need of insisting on procedural

[34] *Daby* (n13) [29].
[35] *Ramdenee* (n29) page 3.
[36] See *Appollon v Nobin & Ors* [2012] SCJ 168.
[37] [1996] SCJ 55, page 2 (my emphasis).
[38] [2012] SCJ 313, page 5.
[39] [2012] UKPC 13, [23] (my emphasis).
[40] [2015] SCJ 68, page 4 (my emphasis).

rules and the need of relaxing insistence on those rules in the interests of justice. In the fulfilment of this duty, the court must necessarily enjoy a discretion which it must, of course, exercise judicially. [And] in the exercise of its discretion, the court will consider the particular circumstances of each case on their own merits.

Although those pronouncements are strictly obiter and do not deal with the question of a PIL, nonetheless, they shed light on how the courts ought to approach this issue and relegate the binary outcome of a dismissal/non-suit to sheer 'nonsense upon stilts'.[41] In line with those pronouncements, a dose of fairness is required. In the interests of justice, the courts ought to adopt a forgiving approach and avoid being overcritical of procedural mistakes that can be corrected. Obviously, a balance must be struck between the rights of both parties, taking into account the facts of the case.

2.4 Alternative Outcome in Oumaduthsingh

In Section 2.2, it was conceded that Judge Goordyal-Chittoo could not deliberate and/or make an order on a potential defence of prescription. But instead of non-suiting Mr Oumaduthsingh – which effectively ousted him from the judicial system through no fault of his own – this dilemma could have been overcome by ordering that the plaint be amended. Although rule 17(2) requires that an application for the amendment of pleadings be made by way of motion, there should be no objection as to why the Judge could not, on her own initiative, resort to rule 17(1) insofar as this is not expressly excluded and is part of her inherent duty of actively managing cases (see Section 3.2).

It is settled law that with regard to amendments, the court will exercise its discretion judiciously whilst taking into account: (a) the nature of the proposed amendment; (b) the stage of the proceedings; (c) the purpose for which it is made; and (d) whether it is likely to cause any prejudice to the other party which may not be compensated by an order for costs.[42]

Continued on page 15...

[41] Jeremy Bentham, 'Anarchial Fallacies' (1796).
[42] See *Best Luck (Mauritius) Ltd v Murdhen & Anor* [2013] SCJ 335, page 3-4; *Earl Seymour v Hassamal* [2014] SCJ 291, page 2; and *Mauritius Eagle Insurance Co Ltd v Associated Container Services Ltd* [2019] SCJ 123, [7].

Question Time!

Theme: 12 March 1992

1. On 12 March 1992, who was the Chief Justice in Mauritius?

2. On 12 March 1992, who was the Director of Public Prosecutions in Mauritius?

3. On 12 March 1992, who was the Solicitor General in Mauritius?

4. On 12 March 1992, who was the Attorney General in Mauritius?

5. Who was the first nominated as Senior Counsel after Mauritius became a Republic?

Please send your answers on mba@mba.intnet.mu The answers and the name of the winner will be announced in the next edition.

Answers – theme Privy Council decisions

1. Mohammed Mukhtar Ali and Shaik Murtuza Ali Haji Gulam Rasool v The Queen (Mauritius) – [1992] UKPC 6
2. The Mango (Tree) – Margaret Toumany and John Mullegadoo v Mardaynaiken Veerasamy [2012] UKPC 13
3. (1) Pierre Simon Andre Sip Heng Wong Ng (2) Louis Charles Mario Ng Ping Man v The Queen (Mauritius) – [1987] UKPC 23
4. Sakoor Sawood Patel, Mrs Bilkiss Banu Patel and Mohamed Patel (Appellants) v Anandsing Beenessreesingh and SICOM Ltd (Respondents) – [2012] UKPC 18
5. General Construction Ltd (Appellant) v (1) Chue Wing & Co Ltd (2) Ibrahim Cassam & Co Ltd (In Liquidation) (Respondents) (Mauritius) – [2013] UKPC 30

Winner

Yash Bujun - Lunch for two at Pima Kraze

Thank you to our sponsor:

Call for Newsletter Articles

We would like to invite members of the profession to submit articles of up to 2500 words which will be featured in the upcoming editions of "the Legal Tape"!

Note: Submit your articles in a "Microsoft Word" document format and any related images separately by sending an email on ***mba@mba.intnet.mu***

We look forward to your contribution!

While Mr Oumaduthsingh's claim was couched in tort, the Judge found that paragraphs 3, 5, and 13 of the plaint revealed an action grounded in contract.[43] However, an amendment to those paragraphs would have cured the breach of non-cumul. It would have also clarified the real matter in controversy without raising any new or substantive issues as the claim was already based in tort. Moreover, little to no prejudice would have been caused to the defendant as the trial had not yet started. An amendment would have also given due weight to the peculiar facts of the case. Although the plaintiff is to be blamed for lodging his claim three days before the maturation date, the underlying fact is that his claim was not time-barred. Having elaborated on why the Judge's order disenfranchises the plaintiff from starting anew, an amendment would circumvent this by allowing the latter to remain in the judicial system so that his claim can proceed onto the merits. Whether the plaintiff wins or loses is immaterial, but his right of access to the court is sacrosanct, and it must be safeguarded at all times. After all, the plaintiff was injured!

Furthermore, the issue of non-cumul, as canvassed by the parties, was premature. The judgment indicates a disagreement on whether or not the relationship between the parties was a contractual one. The defendant contended that it was contractual, but for the plaintiff, it was tortious because he had been recruited by the defendant's subcontractor and not the defendant. However, this issue is essentially a question of fact (and law) that can only be determined after adducing evidence at trial. Therefore, the Judge should have ordered an amendment to the plaint and allowed the claim to proceed in tort. If the evidence at trial revealed a contractual relationship, the defendant would succeed on its PIL, thus bringing a permanent end to the proceedings. But if a tortious claim prevailed, the proceedings would culminate in a judgment. In that sense, a balance would have been struck between the rights of both parties, and Mr Oumaduthsingh's right of access to the court would have also been preserved.

As a result, in the particular circumstances of this case, non-suiting inadvertently punished Mr Oumaduthsingh for an error which could have been corrected by the Judge, without the defendant suffering any injustice. An amendment to the plaint would have been the most appropriate measure. It would have given due weight to the rights of both parties and placed them on an equal footing, consistent with the approach advocated for at Section 2.3.

SECTION 3: FROM THEORY TO PRACTICE

3.1 Sleight of Law

To prove that a defendant's success on a PIL is not limited to a binary outcome, consider the following scenario.

Plaintiff, P, has lodged a civil claim before the Supreme Court of Mauritius against defendant, D. D raises a PIL disputing the Supreme Court's jurisdiction. D argues that P should have started his claim before the Intermediate Court, and prays that the claim be dismissed. The case comes for arguments before Judge, J, who after having heard submissions from both parties, reserves his judgment. J, who is in the process of writing his judgment, believes that P incorrectly seized the Supreme Court – the claim was one for the Intermediate Court. D has therefore succeeded on his PIL. But what should J do in these circumstances? – Should he dismiss, non-suit, or make any other order?

The answer is that J should neither dismiss the claim nor non-suit P; instead, J should transfer the proceedings to the Intermediate Court under section 136(1) of the Courts Act 1945 (or Article 170 of the Code de Procedure Civile).[44] To do otherwise, would frustrate the purport of section 136. In the absence of section 136, P would have been ousted from the judicial system, with no alternative but to enter a new claim before the Intermediate Court. But the legislature must have considered this to be an undesirable state of affairs, hence the inclusion of section 136. As such, it can be presupposed that the mischief behind section 136 was not to punish P for his mistake but to cure the procedural defect and ensure that P's claim remains in the judicial system so that it can continue before the competent court. In fact, section 136 becomes significant if in our example the prescriptive period matured during the proceedings. As discussed in Section 2.1, non-suiting would not interrupt the prescriptive period so that if P were to institute proceedings before the Intermediate Court, D will succeed in showing that P's claim is time-barred.

Therefore, in this example, although D is successful on his PIL, the outcome is not one of dismissal or non-suit, but the transfer of P's claim to the Intermediate Court by virtue of section 136(1) of the Courts Act 1945.[45] Hence, it can also be said that the consequence of upholding a PIL is not always that of a dismissal or a non-suit.[46]

[43] *Oumaduthsingh* (n1) page.
[44] For the purposes of this essay, I will focus on section 136 as it relatively unknown compared to Article 170.
[45] It is relevant note that section 136 only applies to the transfer of proceedings from a higher court to a lower court but not vice versa. Unfortunately, I cannot comprehend why this is the case, and it would be desirable if section 136 is amended to apply both ways. Perhaps, Article 170 of the Code de Procédure Civile caters for this void.

3.2 Shielding section 136

Before concluding, I envisage that the legal purists would probably challenge my reading of section 136(1), so let me first address their potential objections.

Section 136(1)(a) stipulates that:

In any action commenced in the Supreme Court, the court may at any time, on application made in that behalf by any party by way of motion, make an order that the claim and counterclaim, if any, or, if the only matter remaining to be tried is the counterclaim, the counterclaim, be transferred to any court which has jurisdiction to hear and determine the subject matter of the claim or counterclaim, as the case may be, and the amount thereof.

However, restricting the scope of section 136(1)(a) to '[an] application made in that behalf by any party by way of motion' is incorrect for two reasons.

Firstly, besides deciding facts in issue, it is axiomatic that courts have an active and continuing duty of managing cases until judgment is delivered. As such, Judges/Magistrates must be proactive and take the necessary steps to ensure that cases run smoothly and expeditiously through the judicial system,[47] even before the case is heard on the merits. As explained above, the purport of section 136 was, inter alia, to prevent new proceedings from being initiated for an action started before a superior court instead of the appropriate lower court. Therefore, section 136 is a valuable case management tool, and since Judges/Magistrates have an inherent duty of managing cases, there should be no objection as to why they cannot, on their own initiative, make use of section 136, the more when this is not expressly excluded. Further, to confine section 136 to the litigating parties when they are completely oblivious to its very existence, would dilute if not render nugatory its raison d'être. Hence, there is a need for an expansive reading of section 136 (and any legislative provision dealing with case management), especially in absence of anything similar to the UK's CPR 3.3.

Secondly, the clauses 'the court may at any time' (clause 1) and 'on application made in that behalf by any party by way of motion' (clause 2) are disjunctive. Clause 2 is a non-restrictive clause which can be removed without modifying the meaning of section 136(1)(a). In fact, clause 2 must have been included to account for the realities of litigation, without in any way qualifying clause 1. After all, the litigating parties, who are in possession of the pleadings at the outset of the case, would be in a better position than the court in identifying and raising at the earliest opportunity the question of jurisdiction. As such, clauses 1 and 2 should not be read conjunctively; they are disjunctive in that the court may, either acting on its own initiative or following a motion by a party, order the transfer of proceedings to a lower court. Such a reading would also be consistent with the mischief of section 136, the courts' inherent duty of managing cases, and the flexible approach advocated for in Section 2.3.

Finally, and in any event, Article 170 of the Code Procédure Civile puts the matter to rest. Article 170 states that: '[s]i néanmoins le tribunal était incompétent en raison de la matière, le renvoi pourra être demandé en tout état de cause; et si le renvoi n'était pas demandé, le tribunal sera tenu de renvoyer d'office devant qui de droit.' In other words, in the absence of une demande from the defendant,[48] the Judge/Magistrate must transfer the case to the competent court. Therefore, in our example, if section 136 cannot be relied upon, J will still be bound by Article 170 so that P's claim will have to be transferred to the Intermediate Court.

CONCLUSION

At first glance, a PIL serves an important purpose in litigation. It disposes of defective claims, thereby allowing the court to devote its limited time and resources to those cases which can properly to be heard on the merits. However, against the backdrop of our judicial system, a closer inspection of a PIL reveals a powerful tool which empowers the defendant at the expense of the plaintiff. The defendant who raises a PIL has nothing to lose, for a failure to persuade the court at the threshold has no bearing on his eventual defence on the merits. By contrast, if the plaintiff is unsuccessful, proceedings will be terminated prematurely or permanently, without the court having heard, let alone determined the substantive issues arising in the claim. If litigation was supposed to ensure that both parties are on an equal footing, i.e., to allow the plaintiff to present his case and the defendant to put forward his defence, a PIL deceptively disrupts this equilibrium in favour of the latter. Thus, there is a need to recalibrate the scales, where the defendant's success on a PIL is not a foregone conclusion which invariably leads to either a dismissal or a non-suit. In the interests of justice, the courts ought to exercise a degree of latitude, with due regard being given to the facts of the case. For a failure to do so would leave many plaintiffs in the same position as Mr Oumaduthsingh, with no viable legal avenue through no fault of their own!

[46] Another example would be a PIL with respect to a non-joinder or a misjoinder. See rule 19 of the Supreme Court Rules 2000; *Bomeubles & CIE Ltee v UHY Advisory Ltd* [2021] SCJ 361; and *Baines v Pothunah & Ors* [2016] SCJ 9.
[47] See *Woventex Ltd (In Receivership) v Benichou & Ors* [2005] PRV 27, [15]
[48] See Articles 168 & 169 of the Code de Procédure Civile

The First Lady Chief Justice

19th November 2021 marked a historic moment for the country as Honourable Mrs Rehana Gulbul was appointed Chief Justice, the first woman to become head of the Judiciary.

We extend our best wishes and warm congratulations to the Honourable Chief Justice on this nomination.

New Callees - 21st January 2022

Congratulations to the new members of the Bar and a warm welcome to the profession

1. Mahammad Waakid Allybocus

2. Saniyya Mohammad Saïd Badabhai

3. Luxmi Pooja Bhayro

4. Diksha Dahoo

5. Preety Dawoonauth-Ramruttun

6. Junaid Haroon Fakim

7. Sneh Tareshvee Gobin

8. Chavi Gonpot

9. Karina Veroushka Govinden

10. Stéphane Adrien Jules Hein

11. Derek Andrew Lo Fan Hin

12. Dushinee Maistry

13. Samia Farah Mallam-Hassam

14. Dylan Mannikum

15. Shaimaa Nabeelah Mukoon

16. Kunasegaree Narsinghen

17. Jaiprashanth Poinoosawmy

18. Kaushik Purmessur

19. Soubashini Rengasamy

20. Abhishek Ranveersing Roopun

21. Louis Mathieu Sinatam-bou

22. Shravan Lanshil Tarachand

23. Vanessen Tirvassen

Upcoming Events

Upcoming events on this year's Calendar

6th May 2022
Blood Donation

11th May 2022
Book Signing at the seat of the MBA

15th May 2022
Moutain Hike - Piton de la Petite Riviere Noire

29th May 2022
Cheese & Wine Tasting

***
Badminton Tournament

***
Tea with....
(A talk at the seat of the MBA)

***
Moot/Debate

23th July 2022
Football Tournament

***
Animal Welfare day / Pet Adoption Day

***
Board Games Tournament

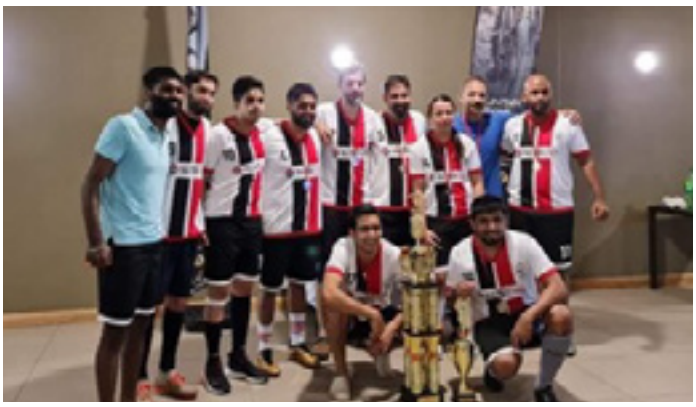
***
Movie Night at the seat of the MBA

25th November 2022
End of Year Dinner

*** *date to be confirmed*

2021 Event in pictures

Football tournament - Photo Credit Yahia Nazroo



Booster dose vaccination at the seat of the MBA

- Photo Credit Yahia Nazroo

Happy Hour at Le Suffren on 25th March 2022

Designed with ❤ by Mopanda Print Ltd