

IN THE HIGH COURT OF SWAZILAND

IN THE MATTER BETWEEN

Civ. Case No. 801/97

TAKHONA DLAMINI

APPLICANT

AND

PRESIDENT OF THE INDUSTRIAL COURT

1st RESPONDENT

NANTEX (SWAZILAND) (PTY) LTD

2nd RESPONDENT

CORAM :

DUNN J

FOR THE APPLICANT :

MR. SHABANGU

FOR THE 2nd RESPONDENT :

MR. FLYNN

JUDGMENT

23rd MAY 1997

This is an application to review a decision of the Industrial Court delivered on the 10th February 1997.

The applicant was one of a number of applicants who brought proceedings against the 2nd respondent. The applications arose from the same cause of action and an application for their consolidation for purposes of trial was allowed by the Industrial Court. At the commencement of the hearing, the 2nd respondent raised a point in limine, touching upon the Industrial Court's jurisdiction to hear the matter on the grounds that the dispute in which the Court was called upon to adjudicate was not properly before the Court in terms of the Industrial Relations Act (the Act).

The point in limine arose from the fact that the dispute which the Labour Commissioner certified

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as unresolved in terms of section 65(1) of the Act was as follows: "unfair dismissal. Maximum compensation". The claim filed by the applicant included claims that had not been itemised in the report to the Labour Commissioner. The submission on behalf of the 2nd respondent was that the claims had not been conciliated upon and were therefore not properly before the Court. It was argued on behalf of the applicant that the separate claims all fell under the heading of unfair dismissal upon which the Labour Commissioner had conciliated.

Section 5 of the Act provides that the Industrial court shall have jurisdiction in respect of any matter properly before it. Part VIII of the Act sets out the procedures to be followed where a dispute is reported to the Labour Commissioner. In the event that a dispute is not resolved, the Labour Commissioner is obliged to issue a certificate of an unresolved dispute. It is upon the production of such a certificate that the industrial Court may be called upon to adjudicate.

The Industrial Court upheld the point in limine and held that it had no jurisdiction as the matter was not properly before it. The Court relied upon a decision of Hannah C J in the case of SWAZILAND FRUIT CANNERS (PTY) LTD. vs PHILLIP VILAKATI and BANARD DLAMINI Appeal No. 2/1987 and what

the Court stated were its own decisions (the actual decisions were, however, not cited) that a report to the Labour Commissioner should fully set out the issues in dispute for conciliation by the Labour Commissioner. The Court further referred to Rule 3(2) of the Industrial Court Rules which provides:

The Court may not take cognisance of any dispute.

Which has not been reported or dealt with in accordance with Part VII of the Act.

In terms of section 58(1)(c) a party making a report to the Labour Commissioner is obliged to specify particulars of all the issues in dispute, stating as precisely as possible their nature and scope.

The power of the High Court to review decisions of the Industrial Court is set out as follows under section 11(5) of the Act:

A decision or order of the Court shall, at the request of any Interested party, be subject to review by the High Court on grounds permissible at common law.

The argument advanced on behalf of the applicant is that in holding that it had no jurisdiction to hear the matter, the Industrial Court misconstrued the powers conferred upon it by the Act. The cases of BUNTING v. THE MINISTER OF JUSTICE 1963(4) SA 531 and AGRICULTURAL SUPPLY ASSOC v. MINISTER OF AGRICULTURE 1970(4) SA 65 were cited as authority for the submission that the decision of the Industrial Court was, in the circumstances, reviewable at common law.

It is not necessary for me to go into a consideration of the grounds of review permissible at common law. The point in this application is that the Industrial Court considered the jurisdiction conferred upon it by Section 5 together with the mandatory procedures to be followed under Part

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VIII of the Act and held, as a matter of law, that it had no jurisdiction. The applicant is not seeking to rely on any irregularity or impropriety, in the process and procedures followed by the Court in deciding the point raised by the 2nd respondent.

The cases relied upon by the applicant dealt with the question of the proper exercise of a discretion conferred by statute. The applicant's remedy is one by way of appeal to the Industrial Court of Appeal established by section 11 of the Act.

The application is dismissed with costs.

B. DUNN

JUDGE