

SWAZILAND HIGH COURT

Ngcamphalala Kenneth

Plaintiff

Vs

First National Bank of Swaziland

Defendant

Civ. Trial No. 3191/1997

Coram SAPIRE, CJ

For Plaintiff. L. Maziya

For Defendant Mr. L. Khumalo

JUDGMENT

(20/02/2002)

This is an action in which the plaintiff, a former employee of the defendant, which is the First National Bank of Swaziland, is suing the bank on the basis of what he says was agreed when he was first employed by Meridian Bank. The evidence is and allegations are that the same terms applied when the First National Bank took on the business of Meridian together with some of its employees including the plaintiff

The plaintiff alleges that during 1995 he entered into a contract of employment with the defendant in terms of which the defendant was to employ him on the same terms and conditions that governed when had been employed by the Meridian Bank. There is also reference that in January in the same year a contract of employment with him was entered into by Meridian Bank as a Manager at the Bank's Head Office.

1

The agreements, on which Plaintiff relies, are in writing, but no mention is made therein of the terms, which are alleged by the plaintiff. The terms are

1. That he would be paid a salary of E14 000 per month;
2. That he would be given a company/bank car,
3. That he would receive a scholarship of 7 000.00 which had been offered to him by the Standard Chartered Bank which was to be taken over by the Defendant. There is no evidence of such an agreement between the plaintiff and the Standard Bank. Nobody has been called from the Standard Chartered Bank or its successors to establish that such an agreement existed and that he was to embark upon an MBA Programme.
4. The plaintiff also was to be entitled to a car loan of 1½ times his annual salary and interest thereon would be 5%.
5. He also claims that it was agreed that he would be entitled to 4 return airfares to London where he was to write for his MBA Programme and the total sum thereof was E16 000.00.

6. The plaintiff would be entitled to have his electricity, water, maid and entertainment at the sum of E1 200.00 per month.

Can plaintiff lead evidence to contradict and vary the terms of a written contract? The circumstances in which this may be done are limited. There is one circumstance, which may have applied in this case, that is, if the plaintiff could have shown that it was not intended that the written agreement should record all the terms of the agreement. It was on this that the case turned.

There was a sharp conflict between the Plaintiff and the defence witnesses. The Plaintiff maintained that he had been headhunted from his previous employers and that he was promised benefits not less than his former employers had promised him. These comprised the additional terms not mentioned in the letters that were the contract documents.

Defendant's witnesses were equally adamant that there was no collateral agreement. This being so the plaintiff has just not proved his case.

2

The damages, which Plaintiff claims, arise out of breach of the unwritten terms that do not appear in the letter of appointment.

Such breach by the Defendant is alleged to be that

- a) it failed to pay the plaintiff the E14 000.00 per month;
- b) it failed to honour the undertaking to pay the tuition and air ticket;
- c) it failed to award the plaintiff its car loan at the rate of 5% but charged him 19.7%.

Those are the heads of damages. They are repeated in paragraph 9 of the particulars of claim. Nothing is mentioned in the summons of any breach relating to the inferiority of the post to which the Plaintiff was appointed at the bank, either in the Meridian or First National Bank.

The onus was, and remained on the Plaintiff to prove the contract in the terms alleged by him

The Plaintiff's evidence that the parties did not intend that the letters of appointment, subscribed by both parties should be the only memorial of their transactions, is in sharp conflict with that of the defendant's witnesses to the contrary.

Plaintiff was initially employed on probationary basis. It is inconceivable that these other terms which have been included if the contract was only probationary. It is inconceivable that these terms, of which defendant talks could have been inducement for him to leave his former employers to join the defendant's predecessors. This is so because if the defendant intended to be deceitful as suggested by the plaintiff then in order to escape that condition what could have happened was that at the end of the probationary period the defendant could have refused to confirm the contract.

Again when the First National Bank, the defendant, took over the business of Meridian and the employees were reengaged, once again the terms and conditions were confirmed and nothing was ever said about the terms or conditions, which are the basis of the Plaintiff's claim.

3

Even if there were nothing to choose between the Plaintiff's testimony and the adduced on behalf of the Defendant, the balance of probabilities not in the Plaintiff's favour. Quite the contrary is true.

I cannot find that the parties intended that only part of their agreement as to the terms and conditions of the Plaintiff's service should be reflected in the written memorials. The plaintiff may therefore not lead evidence to contradict the written contracts. There will be judgment for the defendant with costs including counsel's fee in terms of rule 68.

SAPIRE, CJ