

IN THE HIGH COURT OF SWAZILAND

Civil case no. 139/98

In the matter

Mphumelelo Nelson Gwebu

V

Attorney General

Teaching Service Commission

Accountant General

Coram Sapire CJ

For Applicant Mr. A Shabangu

For Respondent

Judgment

(02/06/99)

The Applicant, who is a teacher, seeks an order on motion directing the third Respondent to pay an amount of E2763.31 to the Applicant. The amount represents a portion of the Applicants salary withheld from him. There is, on the papers, a dispute as to whether the Respondent was entitled to deduct the amount. Because of the dispute it may not be possible to decide the matter on the papers without hearing oral evidence. It may be that the Applicant should have instituted an action for the relief he claims. This does not presently call for a decision for the respondent has raised a point in limine.

The substance of the point is that because Applicant has to rely on the provisions of Sections 46 and 47 of the Employment Act<sup>1</sup> for his cause of action, it is a matter which

<sup>1</sup> Act No 5 of 1980

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is reserved for the exclusive jurisdiction of the Industrial Court. See Section 5 of the Industrial Relations Act<sup>2</sup>.

In making submissions in support of this argument Respondent's attorney referred me to a decision of the Appeal court Sibongile Nxumalo and others v Attorney General and others<sup>3</sup>. The judgment in that case would appear to be four square against Respondent's contentions. Counsel argued however that the Appeal Court had put too narrow a limit on those cases in respect of which the legislature has given exclusive jurisdiction to the Industrial Court..

The argument is that the dispute between the Applicant and the Teaching Service Commission is one, which falls within the definition of "disputes" in Section 2 of the Act. It falls therefor to be determined, in accordance with the provisions of the labour legislation, including the Employment Act and the Labour Relations Act. As such it falls within that class of matters which are reserved for the exclusive jurisdiction of the Industrial Court.

In view of the close correlation of the facts of this case and the facts upon which the decision of the Appeal Court was made, precedent prevents me from considering the argument advanced in support of the point in limine. I am bound by the decision of the superior court. The applicant was one of the parties to the Appeal, and it would be unacceptable for me now to even comment on the argument or

express any view thereon

The point in limine is therefor dismissed with costs

S W Sapire CJ

2 Act No 5 of 1996

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Appeal Case No 25/96