IN THE HIGH COURT OF SWAZILAND

Civil case no.1721/96

IN THE MATTER BETWEEN:

JEREMIAH JABULANE DLAMINI	1st PLAINTIFF
AGRIPPA GAMA	2nd PLAINTIFF
NICODEMUS NKAMBULE	3rd PLAINTIFF
VS	
CENTRAL BANK OF SWAZILAND	DEPENDANT
CORAM	: MATSEBULA J
FOR THE PLAINTIFFS	: MR S. DLAMINI
FOR THE DEFENDANT	: MR. HENWOOD

RULING

08/07/99

The plaintiff issued summons on 17th July 1996 against the dependant for the following relief:

(a) Payment of a total of El 50 000.00 made out of E50 000 00 due to each plaintiff;
(b) Interest thereon (it has not been stated what the interest would be) on the sum of E150 000.00 calculated from the date of summons to date of payment;
(c) Costs;
(d) Further and/or alternative relief.

According to the particulars of claim, paragraph 5 the action was based on a partly written and verbal contract and paragraph 5 reads as follows:

"During the month of March 1994 and April 1994 at Mbabane, plaintiffs and defendant entered into a partly written and partly verbal contract (and if one reads further because one would have expected that the terms of both the written and verbal contract should have been specified, that was not done and it does not appear to me that the defendant asked for further particulars but they went on and denied that there was such a verbal contract)."

The written contract in respect of first and second plaintiff is annexed as annexure "Al" and "A2.." Mr. Dlamini indicated that he was abandoning the claim by the third plaintiff because he is dead.

It has not been stated by Mr. Dlamini when the third plaintiff died but I would assume that he died before litis constastio otherwise Mr. Dlamini would have continued to sue notwithstanding the death of the third plaintiff. After the close of the pleadings, defendant gave notice of its intention to raise a special plea. The special plea was to the jurisdiction of the High Court in terms of Section 5 of the Industrial Relations Act of 1996 which according to the point raise oust the jurisdiction of the High Court in matters of this nature. The special plea having been raised by the defendant, I invited Mr. Henwood to address me first in accordance with the Rule semper necessitas probandi incumbit alii qui agit which loosely translated is "the necessity of proof always lies upon he who takes the action." Mr. Henwood's point was that before the enactment of the 1996 Industrial Relations Act, Section 5(1) this matter could have been brought to the High Court but once the 1996 was in place such matters as the present one became the exclusive domain of the Industrial Court. Mr. Henwood referred me to page 11 of the judgment to which I was referred by Mr. Dlamini, the judgment of the Court of Appeal in the matter of SIBONGILE NXUMALO AND OTHERS CASE NO.25/96 (unreported) page 11 reads as

follows:

"An analysis of the entire present Act reveals that those matters which are expressly reserved for Industrial Court's consideration are (a) the provisions of the constitutions of employer or employee organisations, any violations of such constitutions, unlawful conduct in the election of office bearers in such organisations, the deposit and safeguarding of organisations' funds and certain ancillary matters relating to employee and employer organisations, federations and international workers and employer organisations and, in particular, their recognition (See Part IV of the Act); (b) the establishment of joint industrial

2

councils, work councils and collective agreements (see Parts V, VI and VII of the Act; and (c) the determination of disputes."

When Mr. Henwood referred me to this paragraph, I immediately was persuaded that he had the point, this was in view of the annexure to which I will refer that is annexure on page 6 in respect of one of the plaintiffs which reads as follows:

"The bank would like to offer you the option of taking voluntary separation with full terminal benefits calculated on the basis of the collective agreement plus other additional incentives."
I looked at the collective agreement and immediately agreed with Mr. Henwood that this court would not have jurisdiction to hear the matter. But reading further at page 11 the Court of Appeal went into details dealing with what a dispute is defined as in Section 2 of the Act including a grievance, trade dispute, and means any dispute over –

"(a) entitlement of any person or group of persons to any benefit under an existing collective agreement (again the word collective agreement appears) or work council agreement."

The learned Judge went on but I am specifically focussing my attention on the word "collective agreement." However, when Mr. Dlamini in turn made his submission on behalf of the two plaintiffs for which he is appearing, he told the court that none of the matters mentioned at page 11 are his clients dispute. Their dispute is merely a promise to pay each of the plaintiffs an amount of E50 000.00 if they accepted a package in terms of the collective agreement. This, Mr. Dlamini said was accepted by his clients but the defendant subsequently reneged on the promises and failed to pay his clients the E50 000.00 each as promised. Mr. Dlamini states, his clients have come to this court to ask the court to order the defendant for a specific performance i.e. to honour the promises and pay each of the plaintiffs the E50 000.00.

In the light of the above, I am satisfied that the matter is one in which this court has jurisdiction, in other words I find that the plaintiff's claim are a common law claim. I dismiss the point raised in limine and hold that this court has the jurisdiction to hear the matter however, I am going to reserve the costs for the final determination of the matter

3

if that would be the case but any of the counsel if the matter does not proceed farther than today can set the matter down to argue the question of costs.

J. M. MATSEBULA

JUDGE

4