THE HIGH COURT OF SWAZILAND

DR VELELENI DLAMINI

Plaintiff

And

THE MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS

1st Defendant

THE ATTORNEY GENERAL

2nd Defendant

Civil Case No. 1945/2003

Coram: S. B. MAPHALALA-J

For the Plaintiff : MR. S. MDLADLA

For the Defendants: MISS N. KATAMZI

JUDGMENT

(8lh July 2005)

[1] The Plaintiff instituted action proceedings on 5 August 2003 against the Defendant for payment of the sum of El, 500, 000-00 as compensation for loss of income when Plaintiff was appointed a member of the Swaziland Constitutional Review Commission on the 26' November 1997, and had to leave her source of income and could not meet her financial obligations. Prior to such appointment Plaintiff was running her own practice known as Bhukwane Memorial Women Clinic and was also a partner at Imphilo Clinic. The Plaintiff is a medical doctor specializing in Obstetrics and Gynaecology.

[2] On the 6lh October 2003, Defendants filed their plea where in the main denied liability as claimed stating, amongst other things, that Plaintiff voluntarily accepted her appointment on condition that as a member of the commission she was to be paid at a retainer fee of E4, 000-00 per month and a sitting allowance of E225-00 per sitting. Plaintiff was also entitled to travelling allowance at the Civil Service rate. It was averred that Government did not exert any undue influence on the Plaintiff to accept these conditions. A further averment is that, notwithstanding considerable deliberation on Plaintiffs submissions to Government relating to her professional and financial commitments, Government concluded that Plaintiff could not be compensated as she had not been prejudiced and/or was unlikely to be prejudiced by the appointment.

[3] For present purposes however, the Defendants have filed a Notice of Intention to Raise Points of Law in limine contending that the Plaintiffs claim has prescribed in terms of Section 2 (1) (c) of the Limitations of Legal Proceedings against Government Act No. 21 of 1972 and that no relief is available to the Plaintiff under Section 4(1).

[4] In arguments before me it was contended for the Defendant that Plaintiff has failed to serve a written demand upon the Attorney-General within ninety days after the debt became due as required by Section 2 (1) (a) of the Limitation of Legal Proceedings against Government Act 21 of 1972. Further, Plaintiff has failed to institute the present action within twenty-four (24) months from the date on which the debt, if any became due. Furthermore,

it is contended for the Defendants that the Plaintiffs claim that by annexure "D3" the Defendants made an unequivocal acknowledgment of liability to her for the amount she is claiming is contested. Section 2 of the Limitation Act, does not therefore apply to her claim. Annexure "D3" is a letter dated 26lh November 1997 written by the Head of Secretariat addressed "to whom it may concern" touching on the issue of compensation. I must say that there is a lot of debate around this letter as to whether or not it constitutes an unequivocal acknowledgment of liability to Defendants. A further argument on this letter is that if it does create a cause of action then such arose on the 26th November 1997, and Plaintiff should have filed a demand within ninety days from that date and instituted legal proceedings within twenty-four (24) months from that date.

[5] The argument advanced for the Plaintiff against the objection in limine is simply that this point is out of place, as the time for instituting the claim had not lapsed. The letter of demand was filed within twenty-four (24) months. It is argued further that the amount due could only be computed after the exercise. Furthermore, that the claim in this instance falls under Section 2 (b) of the Act. The final argument is that of waiver.

[6] Indeed, it appears to me that the Defendants are blowing hot and cold in advancing this objection at this stage of the proceedings. I say so because the Plaintiff at paragraph 6 of her Particulars of Claim averred as follows:

"Notwithstanding demand in terms of the Limitation against Government Act the Defendant refuses and/or neglects to pay".

[7] The Defendants answered to the above averment at paragraph 3 of its plea filed on the 6lh October 2003 as follows:

"AD Paragraph 6.

Defendants admit having received demand but disclaim liability to the Plaintiff and puts Plaintiff to strict proof thereof.

[8] Clearly, from the above outline of averments Defendants have admitted that demand was effected by the Plaintiff in terms of the provisions of the Limitation against Government Act. It is trite law that a fact admitted or deemed to be admitted is eliminated as an issue in the action (see Gordon vs Tarnow 1947 (3) S.A. 525 (A) at 531). It is further settled law that once an admission has been made, it may be difficult to withdraw. Withdrawal can be effected only by an amendment to the plea (see also Gordon vs Tarnow (supra) at 531 - 2). In casu Defendants have not sought an amendment as required. Furthermore, a letter of demand was filed from the bar by

Mr. Mdladla for the Plaintiff proving beyond a scintilla of doubt that such demand was made to the Attorney-General as required by the law on the 30lh October 2002. It is also evident that such letter of demand was filed within twenty-four (24) months as required by the Act. Therefore, on these reasons I find that this aspect of the point of law in limine is misconceived.

[9] Coming to the second leg of the point of law in limine, namely that no relief is available to the Plaintiff under Section 4 (1). It is my considered view, that Mr. Mdladla is correct that the claim in this instance falls under Section 2 (b) of the Act. Similarity, this point of law cannot succeed.

[10] In the result, the points of law in limine are dismissed with costs. The matter is to proceed to trial.

S.B. MAPHALALA

JUDGE