

(b) That an order be and is hereby issued directing 1st Respondent to pay to Applicant all arrear salaries from the month of August 2003 to date in accordance with the contract of employment entered into and signed by and between Applicant and the 1st Respondent.

(c) That an order be and is hereby issued directing the 1st Respondent to pay costs

[2] The cause of action is set out in applicant's affidavit as follows:

Paragraph 4 *"During or around the year 1995 I entered into a contract of employment with the 1st respondent in terms of which I was engaged by the latter to provide teaching services to pupils of Siyendle Secondary School."*

Paragraph 5 *"The said contract of employment was concluded at Mbabane, District of Hhohho. When the said contract was concluded, I represented myself and the 1st respondent was represented by its Executive Secretary."*

Paragraph 6 *"The said contract of employment*

remains in force to date and was not lawfully terminated either by myself or the 1st respondent.

Paragraph 7 "During or around the month of August 2003, the 1st respondent without either conducting disciplinary proceedings against myself or applying for a lawful cancellation of the contract of employment between itself and myself stopped the payment of my salary."

Paragraph 8 "The stopping or non-payment of my salary by the 1st respondent is wrongful and unlawful in so far as it was carried out without following the proper channels of law."

[3] Mr. Kunene for the Respondents has raised a point *in limine* namely the applicant is barred from instituting these proceedings in this honourable court, regard had to the nature of the dispute, which is between an employer and an employee. This application should be brought before the Industrial Court in terms of section 8 of the Industrial Relations Act 1 of 2000.

[4] Section 8 (1) inter alia reads as follows:

*"The Court shall ... have exclusive jurisdiction ... **in respect of any matter which may arise at common law** between an*

employer and employee in the cause of employment ...”
(My emphasis).

- [5] The word **“employee”** under the interpretation section of the same Act means **“a person whether or not the person is an employee at common law, who works for pay or other remuneration under a contract of service...”** and **“employer” means a person who employs another as an employee...”**
- [6] The cause of action herein arose during August 2003 well after the promulgation of the Industrial Relations Act 2000 as amended and this matter should have been referred to the Industrial Court.
- [7] Counsel for the applicant advanced the argument that the contract of employment entered into between the parties was one under the common law. The words that I have emphasized in paragraph 4 herein above indicate that such matters are also the exclusive domain of the Industrial Court as they are matters which arose at common law. I find this to be the case in this matter.
- [8] The application is dismissed with costs.

Q.M. MABUZA -AJ

