IN THE HIGH COURT OF SWAZILAND

RULING

Case No. 2412/2011

In the matter between

KENNETH BHEKIZWE NGCAMPHALALA **Applicant**

And

SWAZILAND DEVELOPMENT AND SAVINGS BANK **Respondent**

Neutral Citation: Kenneth Bhekizwe Ngcamphalala v Swaziland Development and Savings Bank (2412/2011) [2012] SZHC 131 (18th June 2012)

Coram: Dlamini J;

Heard: 17th April 2012

Delivered: 18th June 2012

Application proceedings – interpretation of order of Industrial Court entered by consent – whether this court has jurisdiction to interpret the order.

Summary: The applicant was granted judgment at the Industrial Court in his favour. The respondent duly noted an appeal. In the meantime applicant and respondent signed a memorandum of agreement wherein the judgment of the Industrial Court was stayed pending appeal and should the respondent's appeal fail, respondent undertook to pay interest at the rate of 9% per annum from the date of judgment. Applicant has lodged an application seeking for interest at 9% per annum cumulative.

[1] The applicant asserts that it was an agreed term that interest should be compounded. In support of this averment, applicant refers the court to annexure **KBN 2** and **KBN3**. The agreement was made an order of court at the Industrial Court. Respondent has not answered to the merits but raised a point in *limine:*

[2] Respondent has submitted that as the memorandum of agreement was made an order of Court at the Industrial Court, this court cannot therefore be called upon to interpret an order of another court and therefore lacks jurisdiction.

[3] I agree with the respondent that the general principle is that a court that issued the judgment is in a better position to interpret it where there is ambiguity or uncertainty. However, this is not a hard and fast rule. Each case must be decided in its peculiar circumstances.

[4] In *casu* respondent's contention would be applicable had the decision of the Industrial Court been based on issues between the two parties. In the instant case both parties were at *ad idem* and manifested the same by drawing the memorandum of agreement. This memorandum was only brought before court to be endorsed as a court order. Where therefore there

is any issue, on the reading and interpretation of the same, in the absence of any material prejudice shown by the respondent, I do not agree that by virtue of it emanating from the Industrial Court, this court's jurisdiction is therefore ousted in the circumstances. There were no issues to be determined which led to the present order of court that needs interpretation.

[5] Should I be found to have erred in my conclusion, there is another perspective from which the matter could be decided.

[6] Section 8 (1) of the Industrial Relations Act No.1 of 2000 highlights:

> *"The court shall, subject to sections 17 and 65, have exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of an application, claim or complaint or infringement of any of the provisions of this Act, the Employment Act, the Workmen's Compensation Act, or any other legislation which extends jurisdiction to the court, or in respect of any matter which may arise at Common Law between an employer and employee in the course of employment or between employers' association and a trade union, or staff association or between an employee's association, a trade union, a staff association, a federation and a member thereof*".

[7] Interpreting this section, **M. C. B. Maphalala J**. as he then was, held in **Mandla James Dlamini v Select Management Services (Pty) Ltd and 2 Others 3381/09:**

> "11. *It is apparent from the above section that the Industrial Court has exclusive jurisdiction in matters relating to employer/employee relations at the workplace; it should relate to*

a "dispute" as envisaged in section 3 of the Industrial Relations Act of 2000. The present application relates to the deductions on the salary of the applicant made by the First Respondent in conjunction with the Second Respondent; it has no bearing on the contract of employment between the applicant and his employer. For this reason, this court has the requisite jurisdiction to hear this matter. It is common cause that this matter arose from a loan agreement, and the garnishee order was issued pursuant to the failure by the applicant to repay the loan. The order was issued by this court hence, it is logical that this application is heard by this court."

[8] The learned judge continued to interpret section 2 of the Industrial Relations Act of 2000 in that the word "dispute" relates to matters arising from employer-employee relationship at the workplace. He then held that the question of deduction of salary could not be envisaged as a dispute in terms of section 2 of the Act.

[9] By analogy, the issue before court is one of interpreting a court judgment which was brought by consent by both parties in a form of memorandum of agreement. The issue before me therefore cannot be held to be "*dispute*" as envisaged by section 2 of the Act and therefore this court having inherent jurisdiction has the right to entertain applicant's application.

[10] Lastly, I am duty bound to say a word of caution to counsel who rely on technicalities for their cases by drawing from the wise words of **Terbutt J. A.** in **Shell Oil Swaziland (Pty) Ltd v Motor World (Pty) Ltd T/A Sir Motors, 23/2006** where he held as follows:

"……is now well-recognised and firmly established viz not to allow technical objections to less than perfect procedural aspects to interfere in the expeditions and if possible, inexpensive decisions of cases on their real merits".

[11] The learned Judge proceeded to cite from **Nelson Mandela Metropolitan Municipality and Others v Greyvenouw CC and Others 2004 (2) S.A. 81 (SE)** at **95F -96A par 40:**

"*The Court should eschew technical defects and turn its back on inflexible formalism in order to secure the expeditious decisions of matters on their real merits, so avoiding the incurrence of unnecessary delays and costs*".

[12] On the above, I dismiss respondent's point in *limine* and order respondent to file an answering affidavit if so inclined for the matter to be heard on merits.

DLAMINI J.
JUDGE

For Applicant: **S. C. Dlamini**

For Respondent: **Z. Zikalala**