



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

Civil Case No: 737/2009

In the matter between

MESHACK LANGWENYA

PLAINTIFF

And

SWAZI POULTRY PROCESSORS (PTY) LTD

DEFENDANT

Neutral citation: *Meshack Langwenya v Swazi Poultry Processors (PTY) Ltd (737/09)* [2012] SZHC 183  
( 4<sup>th</sup> September 2012)

**Coram:** OTA J.

**Trial ended:** 3<sup>rd</sup> August 2012

**Delivered:** 4<sup>th</sup> September 2012

**Summary:** **Contract for the Supply of chickens: Plaintiff leading extrinsic evidence in proof of terms of agreement embodied in a written document: parole evidence rule: Principles thereof.**

[1] By combined summons the Plaintiff claims the following reliefs against the Defendants:

CLAIM A

1. Payment of the sum of E500,000-00 (Five Hundred Thousand Emalangi)
2. Interest thereon at the rate of 9% a tempore morae.
3. Costs of suit.
4. Further and/or alternative relief.

CLAIM B

1. Payment of the sum of E25,503,17 (Twenty Five Thousand Five Hundred and Three Emalangi and Seventeen Cents)
2. Interest thereon at the rate of 9% a tempore morae.

3. Costs of suit

4. Further and/or alternative relief

[2] I find it imperative to recite the relevant portions of the particulars upon which this claim is founded and they are as follows:-

4.1 *At Matsapha on or about September, 2005 Plaintiff and Defendant entered into an oral contract. Plaintiff represented himself and Defendant was represented by Deon-Henri Van Wyk.*

4.2 *The material terms of the contract were as follows:-*

a) *The Plaintiff will construct chicken sheds at his own expense for purposes of growing chickens for supply to the Defendant.*

b) *The Plaintiff would construct the aforesaid sheds specifically for purposes of growing one day*

*old chicks which upon a certain age and mass determinable by the Defendant would be delivered by Plaintiff to Defendant.*

*c) The Plaintiff would, for a period of 3 months, be subjected to scrutiny in terms of Defendant's standards pertaining to the growth and subsequent delivery of the chickens.*

*d) Defendant would deduct processing levy from Plaintiff's payments during the 3 months period of scrutiny and such processing levy was meant to qualify Plaintiff to the scheme of contracted growers.*

*5.1 It was further agreed as between the parties that the Plaintiff would construct the aforesaid chicken's sheds and that the Defendant would determine the quality and suitability of the accommodation for the chickens.*

*5.2 It was a further term of the agreement that the Defendant would provide to the Plaintiff the*

the configurations and a specification regarding the construction of the chickens sheds.

5.3 It was agreed that the Plaintiff would construct for the purposes of the agreement three chickens sheds as determined by the Defendant for purposes of the agreement.

5.4 The Plaintiff, in terms of the agreement, would construct, at his own costs the said chickens sheds at Mbekelweni, in Manzini Region.

6.1 Upon the specific directions and instruction of the Defendant, the Plaintiff, having constructed the afore-said chickens sheds, and on the Defendant's instructions, would thereafter install equipment and fittings in the said sheds.

6.2 It was an underlying term of the agreement that the Plaintiff having built the sheds and equipped same, in terms of the agreement, as per the instruction of Defendant, would employ persons as workers.

6.4 It was also agreed that Plaintiff, with the assistance of the Defendant, would procure one day old chickens and grow the said chickens to the age and weight required by Defendant.

6.5 It was, as afore-said, a material term of the agreement that the Plaintiff would upon having performed in accordance with the afore-said agreement; the Plaintiff would become a contracted grower of chickens to Defendant by a letter of intent dated 26<sup>th</sup> September 2005, annexed “M1”.

6.6 Pursuant to annexure “M1” Defendant prepared and presented to Plaintiff a draft memorandum of Agreement, annexed hereto marked “M2”

7.

### **CLAIM 1**

7.1 Pursuant to annexures “M1” and “M2” Plaintiff proceeded to;

- a) Construct 3 chicken sheds which costed (sic)an amount in excess of E150 000-00 (Emalangeneni One Hundred and Fifty Thousand) in material and labour at the specifications of the Defendant.
- b) Install equipment and fittings in the chicken sheds which was for a value in excess of E100 000-00 (Emalangeneni One Hundred Thousand).
- c) To employ workers and procured one day old chicks and grew them for purposes of the agreement.

7.2 Upon the expiry of the 3 months, Defendant refused, failed and/or neglected to present and sign **annexure “M2”**.

7.3 Despite the fact that Defendant failed to sign **annexure “M2”** continued to demand from Plaintiff supply of chickens for a period in excess 2 years.

7.4 Despite the fact that Defendant had to supply to Plaintiff the one day old chicks, food and other necessities in terms of the agreement, Defendant refused, failed and/or neglected to do so for the whole period of supply by Plaintiff.

7.5 As a consequence of Defendants breach of the agreement Plaintiff suffered damages with respect to the construction of chicken sheds, installing equipment, hiring workers, buying food and medicine for the chickens, providing water and heat to the chickens which all is in excess of the amount of E500,000-00 (Emalangeneni Five Hundred Thousand) made up as follows:-

a) Construction of 3 chickens sheds	E150 000-00
b) Installing equipment and fittings	E150 000-00
c) Wages for laboures	E 96 000-00
d) General; inclusive of water and electricity	E104 000-00
<b>Total</b>	<b>E500 000-00</b>

7.6 Despite demand Defendant has failed, refused and or neglected to pay to Plaintiff (see annexure “3



**(a)’’)**                    *which amount is now due, owing and payable by  
Defendant to Plaintiff.*

8.

## **CLAIM 2**

*Pursuant to the agreement;*

- 8.1    *The Plaintiff as of the month of February 2006 supplied  
Defendant with chickens until the month of June, 2008,  
(see annexure “2 (a)” to annexure “2 (n).*
- 8.2    *The Defendant, in all the supplies made by the Plaintiff  
deducted various amounts of money as processing  
levy,                    (see annexure “2(a)” to annexure “2(n).*
- 8.3    *The processing levy, in terms of the agreement, was  
intended to assist Plaintiff as a contracted grower  
and                    be supplied with all that was necessary to grow  
the                    chickens.*

8.4 *Defendant failed, refused and/or neglected to assist or supply the Plaintiff with such necessities despite demand and/or numerous reminders from Plaintiff.*

8.5 *The processing levy deducted by Defendant amounts in total to the sum of E25 503.17 (Emalangeni Twenty Five Thousand Five Hundred and Three Seventeen Cents) which Plaintiff is entitled to its return''.*

[3] In proof of the foregoing allegations of fact, the Plaintiff testified and called three other witnesses, **PW2 Patrick Kekane, PW3 Jeremiah Hlophe and PW4 Sandile Ginindza**, who were all cross examined by defence counsel **Mr Henwood**. It is apposite for me to set out the relevant portions of the evidence of these witnesses, at this juncture.

[4] In proof of his claim, the Plaintiff in his evidence told the court, that he entered into an oral agreement with the Defendants who were represented by Deon

Henri-Van Wyk. That under the contract the Plaintiff was to supply chickens to the Defendants and the Defendants would pay the Plaintiff after deducting a processing levy of 15 cents per kilogram of chicken. That this agreement was what led to the Defendants giving the Plaintiff the letter of intent contained in exhibit A (annexure M1). That the processing levy which the Defendants had admitted in their plea, that they were deducting from the Plaintiff, was to go to the Plaintiffs account towards the purchase of shares to become a contract grower. That it was agreed that after 3 cycles of supply by the Plaintiff to the Defendants, that the parties would sign the contract contained in exhibit B (annexure M2) which will qualify him as a contract grower.

[5] Plaintiff told the court, that based on this agreement with the Defendants, he constructed 3 chicken sheds of the dimension of 22 meters by 12 meters, and capacity of 10,000 chickens. That the construction of the chicken sheds was under the specification and supervision of the Defendants, which supervision was carried out by PW2 Patrick Kekane. Thereafter, he installed machines and fittings

equipment which were according to the Defendants specifications, in the chicken sheds, and also employed 2 staff to work in the chicken sheds. The Plaintiff told the court that after he completed 3 cycles, he demanded that the Defendants sign exhibit B, which will qualify him as a contract grower. The Defendants failed to do so. That the Plaintiff then demanded that Defendants repay all the processing levy, as evidenced by annexures 2(a) to 2(n), which the Defendants had been deducting from him, but the Defendants also failed to do so, but rather eventually fired him bringing to an end the contract between the parties.

[6] Plaintiff stated that he suffered damages in that he would not have expended a lot of money, about E150,000-00 constructing the chicken sheds and installing equipment for about E150,000-00 or employing staff, but for the agreement with the Defendants, that he would become a contract grower. That he expended a lot of money on these ventures, but his documentation relating to his expenses were lost when the briefcase in which he

kept his important documents, including these ones, was stolen by armed bandits. Plaintiff told the court that in the wake of the termination of the contract with the Defendants, he could not continue with the business as he had no source or outlet for the chickens, without the Defendants. This is because it was the Defendants that instructed National Chicks to supply him with the chicks, which Plaintiff then bred and sold to the Defendants. Therefore, he could not continue with chicken breeding without an agreement with the Defendants. More to this is that the chicken sheds and equipment were tailored specifically to breeding chickens for the Defendants and no other concern.

[7] It was also Plaintiff's testimony, that becoming a contract grower pursuant to exhibit B, would have accorded him a lot of benefits and leeway in breeding the chickens. This is because being a contract grower would have entitled the Plaintiff to be assisted by the Defendants, in purchasing the chicks, feeds as well as medication for the chicks, which will be deducted from the Plaintiff by the

Defendants, over a period of time. That Plaintiff would no longer use his own vehicle to transport the feeds. Plaintiff will no longer pay transportation fees to the Defendants for transporting the chickens and any time the Plaintiff decided to quit he will be refunded for his shares.

Under cross examination Plaintiff admitted that he on his own stopped supply of the chickens to the Defendants due to their refusal to sign exhibit B,

[8] PW2 Patrick Kekane corroborated the Plaintiff's evidence that Plaintiff had a contract with the Defendants for the supply of said chickens. He told the court that Plaintiff specifically constructed the chicken sheds because he wanted to get a contract with the Defendants. That Plaintiff was not allowed to use the chicken shed he already had, because it was not up to the Defendants' standards and specifications. PW2 told the court that he personally supervised and assisted the Plaintiff in constructing the 3 chicken sheds to the Defendants' specification. He said that he did this on the instructions of the Defendants, as this was part of his

schedule of duties as an employee in the

Defendants' concern at that material point in time. He said exhibit A was signed after constructing the chicken sheds.

[9] PW2 told the court that, Defendants used to deduct 15 cents per kilo of the chickens supplied to it by the Plaintiff as processing levy. That the processing levy was to go to the account of the Plaintiff towards purchase of shares in the Defendants concern, which will qualify the Plaintiff to become a contract grower. Under cross examination, PW2 told the court, that after 3 cycles, if a non contract grower like the Plaintiff passed the performance test, he automatically became entitled to sign the contract contained in exhibit B, which will qualify him as a contract grower and a member of the Kikilikiki Scheme, with the concomitant benefits. PW2 further told the court that he does not know why the Plaintiff was not made a member of the scheme, after he completed 3 cycles.

[10] PW3 and PW4 for their part told the court that they were employed by the Plaintiff as labourers for about 3 years, to man the chicken sheds and that the Plaintiff paid them a salary of E800 each per month. That Plaintiff also contributed the sum of E50-00 per month for each of them, towards the pension scheme. That they both lived in the Plaintiff's house and were fed by him free of charge.

[11] The Defendants filed an amended plea and also led evidence through their current General Manager, **Jeremy Boyd**, DW1. DW1 told the court that the contract of supply of chickens by Plaintiff to the Defendants was governed by exhibit A. That all supply of chickens by growers to the Defendants was governed by contracts. That the kind of contract evidenced by exhibit A was necessitated when there was an increased demand for chickens, that is when contracted growers like Plaintiff, **Mandla Sibandze, Dolly Magongo and Simpiwe Trust** were contracted to supply chickens to the Defendants.



[12] That this sort of contract is different from that evidenced by ext B, which is held by only contract growers in the Kikilikikii Scheme. That the Kikilikikii Scheme is an entity separate from the Defendants. That the only way to become a member of the Kikilikikii Scheme, is where an existing member offers his shares to current members, if there is no member interested in buying the shares, then the shares will be offered to third parties. That this was how **Mandla Sibandze** one of the growers contracted in terms similar to the Plaintiff's, became a member of the Kikilikikii Scheme and a contract grower in terms of exhibit B.

[13] DW1 told the court, that the processing levy which the Defendants charged the Plaintiff was to process the chickens which the Plaintiff supplied to them in the commercial abbattor and is not for purchase of shares to join the Kikilikikii Shceme. That this is clear from a reading of Defence exhibits 1-14. It was further DW1's evidence, that PW2's evidence to the effect that Plaintiff was to become a contracted grower in terms of exhibit B and a member of the Kikilikikii scheme, is not true. PW2 was not employed at the Management level of the Company. His duty was to ensure effective collection of the chickens from the growers

and he was not in a position to take any decision as to membership of the Kikilikikii Scheme. It was further DW1's evidence, that renewal of the contract as contained in exhibit A was based on the performance of the grower. That a close reading of Defence exhibits 1-14 shows that in most cases the chickens grown by the Plaintiff fell below the desired weight of the Defendants, which is 1.75kg.

[14] DW1 further told the court that there was no reason why the Plaintiff should have stopped growing chickens completely when he stopped supplying them to the Defendants. This he says is because the Plaintiff was at liberty to supply the same chickens to three other commercial abattoirs in Swaziland namely Hawane, Maphukeni Umbuluzi farms and Didvokodvo. That Plaintiff could also have sold the chickens at the life market and made more money. That even if Plaintiffs chicken sheds were built specifically to suit the Defendants purposes, the sheds could still be used to grow chickens for other contract growers or for the life market. Since the specification of the sheds was just to ensure good economic growth and this is beneficial for both commercial and life growing.

[15] Now, from the totality of the evidence tendered, it appears to me that the contract between the Plaintiff and Defendants was governed by exhibit A. This is because the Plaintiff told the Court that it was the oral agreement he entered into with **Deon Henri Van Wyk**, Defendants representative for the supply of said chickens, that led the Defendants to give him exhibit A. Infact, **PW2 Patrick Kekane**, told the court, that ext. A was signed after the Plaintiff constructed the chickens sheds and fitted the equipment therein, to the specification of the Defendants. It appears to me therefore, that the building of the three chicken sheds, fitting of the equipments therein were all qualifications to enter into the contract of supply of chickens envinced by exhibit A.

[16] Exhibits A demonstrates the fact of the contract between the parties as follows:-

“

*26<sup>th</sup> September 2005*

*TO WHOM IT MAY CONCERN*

*Swazi Poultry Processors (SPP) is the biggest Poultry Processor in Swaziland.*

*With future expansions and the intension to slaughter a double shift starting approximately July 2006, there is a need to significantly increase the number of growers contracted to grow chickens for Swazi Poultry Processors.*

*This document serves as a letter of intent for Swazi Poultry Processors to enter into a contract with*

*Nombeya Chicken Farm*

*P. O. Box 1270*

*Manzini*

*Swaziland*

*For the supply of 7500 chickens per 9 week cycle. The renewal of contracts between Swazi Poultry Processors and its contracted growers is subject to satisfactory performance.*

*Yours faithfully*

*Deon-Henri Van Wyk*

*SPP Business Manager''*

[17] I agree entirely with defence counsel **Mr Henwood** in Defendants' written submissions, that ext A explains the nature of the relationship between the parties. It states in clear and unambiguous language that it is a letter of intent for the Defendants to enter into contract with the Plaintiff. That the contract would be for the supply of 7 500 chickens per 9 week cycle and that the renewal of contracts between the Defendants and its contracted growers is subject to satisfactory performance. I thus find it as a fact, that the contract between the parties for the supply of said chickens was premised on exhibit A.

[18] It appears to me therefore, that the Plaintiffs contention that there was an oral agreement whereby the Defendants were to give him a contract in terms of ext B, after supply of 3 cycles of chickens, and convert the processing levy he paid towards procuring shares to become a contract grower and a member of the Kikilikikii Scheme, has no legs to stand upon. This is because these facts are not reflected in exhibit A, and for this court to countenance them would run contrary to the parole evidence rule.

[19] This rule is simply that when any contract has been reduced to the form of a document, the terms therein bind the parties and no extrinsic evidence may be given of such contract. It is however the position of the law, that in certain circumstances where there exist an ambiguity in the contract, that the rule may be relaxed and extrinsic evidence led of the surrounding circumstances until a sufficient degree of certainty as to the correct meaning of the contract is ascertained. In the absence of an ambiguity, the meaning of the document can only be derived from the language of the document itself.

[20] In the Defendants written submissions, **Mr Henwood** referred me to the text **Joubert Law of South Africa volume 9 at paragraph 538**, where the learned author said the following about the parole evidence rule

“ *Inadmissibility of extrinsic or parole evidence. When a jurat act is incorporated in a document, it is not generally permissible to adduce extrinsic evidence of its terms. Thus when a transaction has been reduced to writing, the writing is regarded as the exclusive memorial of the transaction*

*and no evidence may be given to contradict, alter, add to or vary its term’’*

[21] Similarly, in my decision in the case of **MTN Swaziland v ZBK Services and another, Case No. 3279/2011**, paragraphs 23 to 29, I enunciated this principle in the following language:-

“23. *In the case of Busaf (Pty) Limited v Vusi Emmanuel Khumalo t/a Zimeleni Transport, Case No. 2839/08, pages 8 and 9, my learned brother Masuku J, aptly captured the foregoing proposition of the law on this subject matter as follows:-*

24. *In their work entitled The South African Law of Evidence (formely Hoffman Zeffert). Lexis Nexis, 2003, the learned authors Zeffert say the following at page 322, regarding the proper position relating to agreements reduced in writing:-*

25. *“If, however, the parties, decide to embody their final agreement in written form, the execution of the documents deprives all previous statements*

*of their legal effect. The document becomes conclusive as to the terms of the transaction which it was intended to record. As the parties previous statements on the subject can have no legal consequences, they are irrelevant and evidence to prove them is therefore inadmissible”.*

26. *The principle enunciated above is referred to by the learned authors as the integration rule.*
27. *Speaking about it in National Board (Pretoria) (Pty) Ltd v Estate Swanepoel 1975 (3) SA 16 (A) at 26, Botha JA quoting from the learned author Wigmore, states as follows:-*

*“ This process of embodying the terms of a jurat act in a single memorial may be termed the integration of the act i.e. its formation from scattered parts into an intergral documentary unity. The practical consequences of this is that its scattered parts, in their former and inchoate shape, do not have any jurat effect; they are*



*replaced by a single other words: When a single memorial, all parties on that topic are the purpose of the terms of their act’’*

*embodiment of the act. In jurat act is embodied in a other utterances of the legally immaterial for determining what are*

28. *The import of the foregoing is that because the parties to the agreement, namely, the Plaintiff and the Defendant decided to embody all the terms of the agreement in a single memorial, the Defendant may not seek to lead evidence tending to prove anything contrary to the express terms of the agreement. To the extent that he seeks to do so, he is totally out of order’’*

29. *It cannot therefore be controverted from the totality of the foregoing, that when parties to an agreement decide to embody the terms of the agreement in a single memorial, that none of the parties may seek to lead evidence tending to prove anything contrary to the express terms of the agreement’’*

[22] In casu, there is absolutely nothing in exhibit A to show that the parties agreed that after 3 cycles the Plaintiff will be given a contract in terms of ext B. There is nothing to show that they agreed that the 15 cents per kilogram deducted from Plaintiff as processing levy was to buy shares for him to become a contract grower as per exhibit B and a member of the Kikilikiki Scheme. I see no ambiguity in the terms of the agreement in exhibit A that would permit the court to extended or expand the meaning of that document to include these terms, in a bid to gather its true meaning and purport. In the circumstance, the Plaintiff is estopped from raising these issues and the totality of the evidence led in proof of them is of no moment. The parties are bound by exhibit A and their relationship can only be construed upon the terms contained in that document.

[23] Exhibit A to my mind confirms the position of the Defendants that the contract of supply of chickens entered into by the Defendants with the Plaintiff and the other three chicken growers who had similar contracts with Plaintiff was borne out of the need to increase the number of growers contracted to grow chickens for Defendants because of

increased demand. It also goes to show that there was no agreement that after 3 cycles of supply the Plaintiff will be given a contract in terms of exhibit B or that the processing levy deducted from Plaintiff was to buy shares towards said contract or that Plaintiff will become a member of the Kikilikikii Scheme.

[24] What ext A says is that Plaintiff was to supply 7500 chickens to Defendants and that renewal of the contract would be based on performance. It appears to me that the transaction between the parties was carried out as they intended in exhibit A. This is because the totality of the evidence tendered shows that the Defendants duly supplied day old chickens to the Plaintiff. Which Plaintiff grew to a certain weight and height. Thereafter, the chickens were collected from Plaintiff and taken to the Defendants who duly paid the Plaintiff for the chickens supplied after deducting the processing levy, used to process the chickens as evidenced by Defence exhibits 1-14 respectively.

[25] There is no evidence led to the effect that the Defendants either refused to supply Plaintiff chickens to be grown or that the Defendants refused to accept the Plaintiff's chickens for

slaughter, or processing, or that Defenants failed or refused to pay the Plaintiff for the chickens supplied, to lead the court to the conclusion that the Defendants breached the terms of the agreement thus entitling the Plaintiff to damages. There is also no evidence to show that the Defendants refused to renew the contract by reason of non performance in terms of exhibit A. Infact the question of performance or non performance is a none issue, as this was not pleaded and no evidence led in proof thereof.

[26] It is not disputed that the Defendants are a commercial abattoir engaged in the business of processing and sale of chickens. The processing levy to my mind, and as rightly contended by the Defendants, bears out its meaning which can be gathered from the transaction between the parties and defence exhibits 1-14 respectively, which is that it is a fee paid by the Plaintiff to process his chickens in the Defendants concern, which is a commercial abattoir. This is more commonsensical than the Plaintiff's stance that the processing levy was to go to purchase shares for him towards becoming a contracted grower in terms of exhibit B and thus a member of the Kikilikikii scheme. This stanze is not only

unrealistic but improbable in the circumstances. The Plaintiff was duly paid for his chickens after the processing levy was deducted. I thus find as a fact that the processing levy was deducted for processing Plaintiff's chickens and it was not meant to purchase shares for the Plaintiff towards becoming a contract grower in terms of exhibit B.

[27] In the light of the totality of the foregoing, the Plaintiff's claim that he is entitled to the damages sought, because Defendant breached the terms of the agreement by refusing to sign exhibit B, cannot stand. I say this because this claim is not valid in law, reason being that the issue of exhibit B, did not form a part of the terms of exhibit A, which is the contract between the parties. Similarly, Plaintiff's contention that he is entitled to be repaid the amounts paid as processing levy must also fail. This is because the Defendants, who it is proved processed chickens for the Plaintiff, were entitled to said processing levy.

[28] It appears to me therefore, that by terminating the contract with the Defendants because they refused to sign exhibit B, it was actually the Plaintiff that breached the terms of the agreement not the Defendants. The Plaintiff cannot therefore

now seek to use the court to benefit from his own unlawfulness.

[29] In the light of the totality of the foregoing, I find that the Plaintiff has failed to prove on the balance of probabilities, that the Defendants breached the terms of the agreement between them. This state of affairs renders the determination of whether or not Plaintiff suffered any damages and the quantum of damages, otiose.

[30] On these premises, the Plaintiff's claim fails. I make the following orders;

- 1) That the Plaintiffs claim as contained in claims A and B, respectively be and are hereby dismissed.
- 2) Costs of suit.

For the Plaintiff: M. S. Dlamini

For the Defendant: J. Henwood

**DELIVERED IN OPEN COURT IN MBABANE ON THIS  
.....DAY OF.....2012**

**OTA J  
JUDGE OF THE HIGH COURT**