



## **IN THE HIGH COURT OF ESWATINI**

**HELD AT MBABANE**

**CASE NO. 838/2019**

In the matter between:

**MLULEKI SIBANDZE & 12 OTHERS**

**Applicant**

And

**SIKHUMBUZO SIMELANE N.O.**

**1<sup>st</sup> Respondent**

**ESWATINI ELECTRICITY COMPANY**

**2<sup>nd</sup> Respondent**

**Neutral Citation:** *Mluleki Simelane & 12 Others v Sikhumbuzo Simelane N.O. & Another (838/2019) [2020] SZHC 89 (07Mayl 2020)*

**CORAM:**

**N.M. MASEKO J**

**FOR THE APPLICANT:**

**MR V.Z. DLAMINI**

**FOR THE RESPONDENT:**

**Mr M. SIBANDZE**

DATE OF DELIVERY OF THE RULING BEING RESCINDED:

7<sup>TH</sup> MAY 2019

DATE OF DELIVERY OF THE RULING RESCINDING

THE RULING OF THE 2<sup>ND</sup> AUGUST 2019:

07<sup>TH</sup> MAY 2020

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**RULING TO RESCIND THE INTERLOCUTORY RULING DELIVERED  
ON THE 2<sup>ND</sup> AUGUST 2019**

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- [1] On the 23<sup>rd</sup> May 2019, the Applicant instituted review proceedings of the 2<sup>nd</sup> Respondent's Ruling which he had delivered on the 21<sup>st</sup> May 2019 in a disciplinary hearing instituted by the 2<sup>nd</sup> Respondent against the Applicant.
- [2] It is common cause that the 2<sup>nd</sup> Respondent raised four points *in limine*, these being urgency, incomplete proceedings, non-joinder and lastly that this Court lacks jurisdiction to deal with this matter as it was a matter arising from a contract of employment between an employer, 2<sup>nd</sup> Respondent, and the employee, Applicant.
- [3] On the 3<sup>rd</sup> July 2019, Counsel on both sides argued the points and I reserved my ruling until the 2<sup>nd</sup> August 2019, when I handed down an *ex tempore* Ruling and dismissed all the points *in limine* and the matter was thereafter

argued on the merits on the 20<sup>th</sup> September 2019. I reserved delivery of the judgment on the merits. In the meantime on the 24<sup>th</sup> October 2019 the Supreme Court delivered a landmark judgment in the case involving the Ministry of Tourism versus Stephen Zuke wherein the legal position that the High Court does not have jurisdiction in matters involving contractual disputes between employers and employees was settled by the Supreme Court.

- [4] Therefore, owing to the Supreme Court decision in the case of **MINISTRY OF TOURISM AND ENVIRONMENTAL AFFAIRS & ANOTHER v STEPHEN ZUKE & ANOTHER 96/2017 [2019] SZSC 37 (24 October 2019)**, wherein the Honourable Supreme Court stated as follows at paragraph 37:-

*“[37] When the Industrial Court determines a labour dispute between an employer and employee it does so within the ambit of Section 8 of the Industrial Relations Act. This does not constitute review proceedings. In determining whether the dispute falls under Section 8 of the Industrial relations Act, the test is whether the dispute between the parties arises solely from a contract of employment between an employer and employee during the course of employment.”*

[6] At paragraph 52 the Learned Justices of the Supreme Court stated as follows:

*"[52] As stated in the preceding paragraphs, generally the Industrial Court has exclusive jurisdiction to deal with all labour disputes arising from contracts of employment between an employer and employee during the course of employment."*

[7] It is therefore my considered view that since the matter has been settled by Supreme Court, I am duty bound to rescind the ex tempore ruling which I delivered on the 2<sup>nd</sup> August 2019.

[8] I am fortified in this regard by the remarks made by Hlophe J in the case of **LONDILE MALAMBE v MUNICIPAL COUNCIL OF MBABANE & ANOTHER** **CASE NO. 1777/2019** delivered on the 24<sup>th</sup> February 2020 where at pages 6-7 paragraph 8 His Lordship stated as follows:

*'[7] In terms of both the Constitution and the Industrial Relations Act 2000, the High Court has no jurisdiction to hear a matter in which the Industrial Court has exclusive jurisdiction. Such matters include those in which a decision made by an employer acting in that capacity is sought to be reviewed even before it is attended by the Industrial Court. A matter where the decision of an employer qua employee is being reviewed is therefore exclusively reserved for the Industrial Court which by extension*

***excludes the High Court. The position is captured as follows in Section 151 (3) (a) of the Constitution of this country:-***

***“Notwithstanding the provisions of subsection (1), the High Court***

***—***

***(a) has no original or appellate jurisdiction in any matter which the Industrial Court has exclusive jurisdiction.”***

[9] It is trite law, that a Court has the right and power to reconsider a ruling it made in interlocutory proceedings. I therefore exercise that right owing to the fact the Supreme Court has settled the matter once and for all that this Court does not have jurisdiction to deal with matters emanating from employer and employee contractual relations.

[10] Consequently I hand down the following order:-

1. The ruling that was delivered by this Court on the 2<sup>nd</sup> August 2019 in this matter pronouncing that it has jurisdiction to deal with the matter is hereby reconsidered and rescinded.

2. It is declared that the High Court does not have jurisdiction in matters emanating from contracts of employment between the employer and employees.

So ordered.



NM MASEKO  
JUDGE