

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 105/90

In the matter between:

TITUS MAHLALELA

APPLICANT

and.

INYONI YAMI SWAZILAND IRRIGATION SCHEME

RESPONDENT

JUDGEMENT

This is an application by the Applicant in which he seeks the Court to grant him relief namely:-

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|-----|-------------------------|---------|
| (a) | Six Months compensation | 1992.00 |
| (b) | One month notice pay | 332.00 |
| (c) | Additional notice pay | 500.00 |
| (d) | Severance Allowance | 850.00 |
| (e) | Leave Pay | 332.00 |

In reply the Respondent has raised preliminary issue which need to be determined before this court can proceed to entertain the trial.

The fundamental issues raised are that there has been no proper compliance with Section 50(3) of the Industrial Relations Act; That the Labour Commissioner has failed to comply with Section 54 of the Industrial Relations Act; That the Labour Commissioner has not served the Respondent with a Certificate of Unresolved Dispute pursuant to Section 58(1) of the Industrial Relations Act and finally that the Applicant accepted the sum of E2528.35 severance allowance in full and final settlement of his claims against the Respondent.

In pursuant of this application Mr. Flynn for the Respondent has forcefully submitted that the provisions of Section 52; 54(1) and 58(1) have not been complied with by the Labour Commissioner, Mr. Flynn further referred this court to the decision of the Lord Chief justice Industrial Court appeal No. 2 of 1987 in the matter between Swaziland Fruit Canners (Pty) 'Limited vs PHILLIP VILAKATI and BARNARD DLAMINI. The Lord Chief Justice decided

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amongst other things that in view of the transgressions of Section 50(3); 54(1) and 58(1) the matter be remitted to the Industrial Court so that either party could apply for the Labour Commissioner to be joined as an interested party or the Court to take such step meru motu namely to join the Labour Commissioner as an interested party.

Mr. Shabangu representing the Applicants has strongly objected to this application. However his submissions with respect do not address the issue before court. The Respondent is not alleging if I heard them right that the breaches of Section 50(1); 58(1) and 54(1) should result in the dismissal of the Applicants case. The Respondent is saying this court cannot hear a matter which is brought before it or a result of the breaches to Part VII of the Industrial Relations Act. To do so would be an invitation to parties to bring cases before court without attempting to resolve or reconcile them. The court would then be flooded with matters that would have been settled had the provisions of Part VII of the Act been invoked

by the Labour Commissioner.

In any event this court is bound by the decision of the High Court on appeal.

In keeping with the decision of the Learned Chief Justice referred hereto this court was going to order that the Commissioner of Labour be joined as a party and thereafter give directions as to how this matter is to be handled.

However that is not all the case for the Respondent. The Respondent has further submitted that the Applicant and Respondent have already settled that matter in full and final settlement and the Applicant signed accepting the sum of E2528.35 attached to the Reply of the Respondent as Annexure A.

This 1 must say is a very fatal submission. The applicant has made no attempt to answer this submission nor has he put before court an authority granting the Court jurisdiction to hear a matter or reopen a case in which the parties have settled and a payment is full and final Settlement has been made

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and received by the Applicant. Applicant has not raised question of coercion or fraud before nor did he Replicate. This submission is finding its way before court for the first time.

This court agrees with Mr. Flynn that the Applicant cannot now come to this court when matter has been settled. This is a proper case in which an award of costs against the Applicant is proper. The applicant acted frivolously and vexatiously well knowing that his case has already been concluded. The court orders that the Applicant bear the costs of the Respondent in these proceedings.

INDUSTRIAL COURT PRESIDENT

10/5/91