

IN THE INDUSTRIAL COURT OF SWAZILAND

Held at Mbabane

Case No. 10/91

In the matter between:

STEPHEN MSIBI

APPLICANT

and

MBABANE MOTORS

RESPONDENT

RULING

This is an application by the Applicant in which he seeks an order rescinding the judgement of this court made on the 17th May, 1991.

The affidavits of the Applicant Stephen Msibi, Israel Mthethwa and Khabonina Dlamini have been attached in support of this application.

A reply to the founding affidavit was filed into court by the Respondent. The grounds advanced by the Applicant for seeking rescission of the judgment of this court made on the 17th May 1991 have not been challenged by the Respondent.

It is the Applicants case that the order made by the court on the 17th May 1991 was obtained from court by the fraudulent misrepresentation of facts by the Respondent. It is the Applicants case that the Respondent gave a false statement which was acted on by the court to the detriment of the Applicant.

It has been submitted on behalf of the Applicant that the Respondent should be condemned in costs on a client attorney scale to mark the courts disapproval. It has further been submitted that the court can rescind its own judgement.

For the Respondent it has been submitted that there was no misrepresentation. As stated earlier on the averments made by the Applicant in the supporting

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affidavits have not been denied. A document was presented to court whose subject was to confirm that it represented a full and final settlement of all claims including that of compensation made by the Applicant against the Respondent. At the bottom the document was dated 24th October 1990. There is an endorsement below the date stating that "Refused cheque at the time 24/10/90 15-15 hrs". There is the signature of the recipient and his witness and a date namely 12/12/90. In a document filed into court by the Respondent on the 25th February 1991 is attached a copy of Memorandum of Agreement dated 12th December 1990. This document has been signed by both the employee and the employer and its states:

"Mr. Foss the employer has agreed to pay E965.86 (Emalangeneni Nine Hundred and sixty five, Eighty Six cents) to the Employee in full and final settlement of his claim relating to Terminal benefit due excluding compensation which will be determined by the Industrial Court.

The said settlement was read over and explained to me by Mrs K.J. Dlamini of Labour Department in my own language and I have understood same placed my signature/thumb impression on it in the presence of Mr. S.R. Foss of Mbabane Motors and Mrs K.J. Dlamini of Labour Department."

As stated earlier on this document is attached to a, reply of the Respondent filed into court on the 25th February 1991.

On the 17th May 1991 the Respondent represented to court the document dated 24th October 1990 but endorsed by the Applicant on the 12th December 1990. There is a further endorsement on the document dated 24th October 1990 and it reads:-

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"12/12/90 Agreed also to pay out October performance bonus of E102.00 and to refund job card 543 costs of E121.25 Total paid (2 cheques) E965.86".

The document dated 24th October 1990 was signed by both the employer and the Employee. The sum of E965.86 referred to is the same sum reflected on the alleged memorandum of Agreement. Did the Respondent pay the Applicant the sum of E965.86 in full and final settlement of all his claims against the Respondent- The document dated 12th December 1990 says terminal benefits due excluding compensation which will be determined by the Industrial Court.

Both parties signed this document.

Was the Respondent honest when it represented to court that the Applicant's claim had been settled in full and final settlement.

This is not true and this is why in the Reply to the founding affidavit Mr. Foss states that he is unable to comment on what transpired in court on the 17th May 1991 as he was not present. He has not made the effort to find out from the Respondent if such misrepresentation had been made on its behalf on the 17th May 1991.

The document dated 24th October 1990 but endorsed by the Applicant on the 12th December 1990 was clearly made to reflect the total agreement of the parties as evidenced by the documents dated 24th October 1990 and 12th December 1990. In short the payment of the sum of E965.86 excluded compensation which was left for the Industrial Court to determine ..

On the 17th May 1991 when the Respondent represented before court that the Applicant's claim had been settled in full and final settlement it knew that this was not true. It deliberately misrepresented the facts to the detriment

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of the Applicant. The Respondent knew the correct position of the parties in this matter which was to await determination of compensation which would be made by the Industrial Court.

This court does not take kindly to such sharp practices. The Applicant has satisfied us that the order obtained by the Respondent from court on the 17th May 1991 was obtained fraudulently through the misrepresentation of facts. This court has accordingly rescinded its order made on the 17th May 1991. This court has further condemned the Respondent in costs on a client attorney scale to show its disapproval of the conduct of the Respondent.

The Applicant's application has accordingly been successful.

MARTIN S. BANDA

INDUSTRIAL COURT PRESIDENT

29/10/91