

IN THE INDUSTRIAL COURT OF SWAZILAND HELD

AT MBABANE

In the Matter between: Case No. 154/91

BERYL NICHOLAS Applicant

AND

THATCHERS JEWELLERY Respondent

RULING

The Respondent in these proceedings has applied for an order that it is entitled to refer to earlier proceedings between the same parties involving the same issues but which proceedings were nullified on account of the death of the member of the court's quorum.

It has been argued on behalf of the Respondent that it is entitled to refer to the proceedings that were ordered null and void as long as it can show the following ingredients namely.

- 1) That the evidence was solicited under cross examination in previous proceedings and is on record
- 2) That the record of the previous proceedings is a public document to which the public have access
- 3) That the record of the previous proceedings must have been made by a public officer in the execution of a public duty.
- 4) That no prejudice will befall the Applicant by the admission of the record of the previous proceedings and no miscarriage of justice will result therefrom.

For the Applicant it was argued that the Respondent cannot refer to the previous proceedings which are now null and void. It has been submitted that once proceedings are declared null and void the contents vanish as if they were

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never in existence. It was further submitted on behalf of the Applicant that nothing remained and nothing can be brought before this court from the previous record.

This court totally agrees with the Applicant. The previous proceedings were declared null and void. It is as if they never existed. They vanished. This court cannot be asked to refer to nothing. Nothing can come out of nothing.

The fact that there is a physical existence of the record is not the issue.

The Court is being asked to reap records that have been declared null and void and no longer in existence. The court cannot embark on such an exercise.

It will be a miscarriage of justice for this court to refer to a record that does not exist. The Respondents application is accordingly dismissed.

MARTIN SAMSON BANDA

INDUSTRIAL COURT PRESIDENT