

IN THE INDUSTRIAL COURT OF SWAZILANDHELD AT MBABANECASE NO. 122/92

In the matter between:

LESLIE MAGONGO

Applicant

and

UNITRANS SWAZILAND LIMITED

Respondent

R U L I N G

The Respondent has raised a point in Limine namely that the Court has no jurisdiction to hear this application as the matter was settled between the parties at the time of the Applicant's dismissal when the Applicant accepted payment of the sum of E4,632.72 in full and final settlement of his claim.

The Respondent then lead the evidence of PW1 STUART BANKS who testified that the Applicant was suspected of dishonesty. PW1 held inquiries and hearings and subsequently the Applicant was dismissed. PW1 stated that the Applicant was entitled to leave pay and prorata payment of annual bonus. The Applicant had already been paid his April wages.

The Respondent then handed exhibit P1 a cheque requisition voucher which is the subject of contention and which the Applicant is alleged to have signed in full and final settlement. PW1 stated that the Applicant was offered Severance Allowance and Notice Pay. He was paid out of compassion because the Company wanted to settle the matter. The Applicant accepted it. PW1 stated that the Applicant acknowledged acceptance at the bottom of the cheque requisition by signing. PW1 stated that the Applicant knew and understood the words. The Applicant

signed/.....

signed in front of PW1 and PW1 signed at the bottom of the page as a witness. As far as PW1 was concerned this matter was settled.

Under cross-examination PW1 stated that he prepared the voucher and witnessed Applicant's signature. PW1 wrote the comments. PW1 said it is not correct that the words were filled in after Applicant had signed. He wrote the comments before Applicant came to collect the cheque. There was no one else present besides PW1 and the Applicant.

The Applicant testified that he was employed by the Respondent on 3rd August, 1987 as an Accountant. He was dismissed on the 1st May, 1992 on allegations of having committed a dishonest act. The Applicant's stated that after termination of his employment on the 1st May, the Respondent made a payment which included Notice Pay, Leave Pay, Severance Pay and Bonus. The Applicant accepted the payment as his part terminal benefits and that they did not include all his terminal benefits. He was not satisfied with the payment because there were many involvements in the circumstances of his dismissal. He was not satisfied because his dismissal took effect in an irregular process. The Applicant stated that he accepted the cheque for the reason that it was not made under any binding settlement when he received it.

When the Applicant was shown exhibit P1 he stated that the words under comments were not there when he signed for the cheque. The Applicant stated that these words were made in the form of binding settlement that when he accepted the cheque he accepted it in full and final settlement. The Applicant then gave evidence on what a cheque requisition voucher is used for. The Applicant stated that had the words under comment been there he would not have signed the cheque requisition voucher because he knows what they mean. The Applicant stated that the words mean that if you sign receiving any payment of sum sought you bind yourself that you cannot claim further. The Applicant was asked why his signature appears at the bottom right hand corner of the cheque requisition voucher

and he/.....

and he said PW1 pointed out the place where to sign just right at the bottom and he said you sign here please.

The Applicant was reminded that his Attorney had asked him what happened before an employee's employment was terminated and amongst other things the Applicant had said that at the Respondent when the employees are dismissed they are given a letter to the effect that they are to be paid all their terminal benefits in full and final settlement and the Applicant said correct. The Applicant was asked if he was telling the Court that he knew the standard practice of the Company that employees are paid in full and final settlement and the Applicant said correct that was the standard practice. The Applicant was asked if he knew this he said yes it was the standard practice that it was done through a letter.

The Applicant was told that his evidence before Court was that he accepted the payment for the reason that it was a genuine payment of his part benefits and he said correct. The Applicant was asked when you collected the cheque you thought the amounts shown were genuine and you are now changing your mind. The reply from the Applicant was that "no I am not changing my mind on this issue I accepted the part payment because I needed the money for my hospital fees".

Speaking for ourselves this sums up the case and the attitude of the Applicant when he received the payment.

Responding to questions from the Court, the Applicant said he was not forced to sign at the corner of exhibit P1.

We would like to reiterate our position in a matter like the one now before Court. We have on various occasions passed Judgement that where parties to a dispute decide to settle their dispute and arising out of that dispute a payment is made by one to the other in full and final


settlement/.....

settlement of all the claims that the other party might have. This brings litigation between those parties on issues arising out of the same matter to an end. They are bound by their settlement and cannot be seen appearing before Court seeking other remedies on issues arising out of the incident.

The Applicant in the present matter is estopped from coming to this Court and praying for any other relief which flows out of the claim on which he entered into a free, voluntary settlement with the Respondent in full and final settlement of this claim.

There is no truth that the words on exhibit P1 under the heading comments saying " L.A. Magongo to sign confirming receipt of all monies dues as full and final settlement" were not there when the Applicant signed exhibit P1. The truth of the matter is that the words the subject of this point in Limine were on the document that is exhibit P1 at the time when the Applicant signed it. The Applicant understood the words. There is no truth that at the time when the Applicant signed exhibit P1 he was not feeling well. If this was the position he would have mentioned the point in examination in chief. He did not need to wait until the Court solicited the information for him to volunteer the evidence. The Applicant was not forced to sign. He was not deceived about its contents. He accepted the money because he needed it for the payment of his hospital fees.

In view of our decision aforesaid there will be no need for us to comment on the point in Limine raised relating to alleged underpaid wages. The Applicant's Application is dismissed.



MARTIN SAMSON BANDA
PRESIDENT - INDUSTRIAL COURT