## IN THE INDUSTRIAL COURT OF SWAZILAND

**HELD AT MBABANE** 

CASE NO. 151/99

In the matter between:

JOHN ZIKALALA APPLICANT

And

RICHMOND ESTATES (PTY) LTD RESPONDENT

CORAM:

NDERI NDUMA : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA ; MEMBER

FOR THE APPLICANT: MR. V. DLAMINI FOR THE RESPONDENT: MR. S. DLAMINI

**RULING** 

(12.08.99)

The Applicant filed an application claiming compensation for unfair dismissal on the 18th February 1999. The Respondent presented its Reply on the 17th March 1999 from the bar in the absence of the Applicant. The matter was then set down for arguments to be made on the 7th April, 1999 and the Respondent was ordered to notify the Applicant's Attorneys of record accordingly.

On the 7th April 1999 the Applicant did not appear and the Respondent's Counsel Mr. Sifiso Dlamini applied for the Arguments to be proceeded on, on the 5th May 1999 provided the Respondents notified the Applicant's Attorneys of the date.

On the 5th May 1999 the Applicant did not appear personally or by a representative and Mr. Sifiso Dlamini produced a letter dated the 7th April 1999 that was faxed to the Applicant's Attorneys on the 8th April 1999 informing them of the date of the arguments.

On the strength of this letter, Mr. Dlamini applied for the Applicant's application to be dismissed which application was granted .

We have since observed however that the said letter faxed to the Applicants contained an error on the face of it which we did not detect at the time we made an order dismissing the application.

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The letter stated that the matter had been postponed to the 5th April 1999 instead of the 5th May 1999. If Mr. Sifiso Dlamini had detected this error, we are definite he would not have moved the court to dismiss the Applicant's Application.

The Applicant has since filed a fresh application which is No 151/99. This application is similar in all aspects to the previous one.

The Applicant ought to have made an application for rescission of the order made on the 5th May 1999 dismissing his application before proceedings to file the fresh application.

The Respondent has since made an application for the fresh matter to be dismissed on the grounds that the matter is res judicata.

Having detected that the order of the 5th May 1999 was made in error, we decline to accede to this application by the Respondent.

We accordingly rescind our order made on the 5th May 1999 dismissing case no 30/99 and direct that the parties set a fresh date for arguments on the points in limine raised thereof.

NDERI NDUMA

PRESIDENT - INDUSTRIAL COURT