

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 289/99

In the matter between:

SOLOMON DLAMINI AND

28 OTHERS

APPLICANT

AND

SMITH & GLENDENNING

CONSTRUCTION (PTY) LTD

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. DAVID MSIBI:

FOR APPLICANT

MR. K. MOTSA:

FOR RESPONDENT

RULING

28/7/00

The respondent has raised an objection in limine in the following terms:

1. The applicants have no legal right, save for the contended issue of notices, to receive further payments because they received and accepted all benefits from respondent in full and final settlement of all their claims arising out of their employment as appears more fully in the signed receipts in Annexure "E1".
2. Respondent did comply with the provisions of Section 33 (c) of the Employment Act - as fully provided in Annexure "E2".

The third objection in limine has been abandoned by respondents.

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I now proceed to deal with the first point. In his argument Mr. Motsa for respondent submitted that each of the applicants appended their signatures to one of the documents (receipts) attached and marked Annexure "E1". Each document was witnessed and dated. Against this background Mr. Motsa stated that the documents represented a full and final settlement of all obligations arising from the contract of employment between the signatories and the respondent. He states that on the strength of these documents there is no claim applicant can bring against respondent regarding their contract of employment.

All the documents contain identical textual provisions as follows:

NAME : SOLOMON DLAMINI

CO. NO. : 1628

I HAVE RECEIVED THE SUM OF E4017.14 BEING FULL AND FINAL SETTLEMENT OF ALL CLAIMS ARISING FROM MY EMPLOYMENT

I CONFIRM I HAVE NO FURTHER CLAIMS

SIGNED :

WITNESS :

DATE :

The text is produced on the letter heads of respondents. Each document is signed by each applicant dated and duly witnessed. However, what is missing from the document is whether the applicants were told of their legal rights before appending their signatures on such documents. It is further not explained if the contents of the documents were explained to the applicants before they appended their signatures.

On the other hand one may say each applicant acknowledged receipt of the relevant amount indicated on the document applicable to him then agreed that the amount constituted a full and final settlement of claims arising from the employment contract.

The question whether applicants thought they were being paid their salaries for the month or they were being paid bonuses cannot arise as the moneys in question are by far greater than their monthly wages. To me it is clear that they knew what they were doing when signing for these amounts.

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In order to determine the objection raised by respondents the court has to interpret these documents. The court has to decide whether these documents constitute a compromise, binding on the applicants and having the effect of an abandonment or waiver of any claim on the part of applicants against respondent arising from the former's employment in the respondent's undertaking.

In the instant case my opinion is that a contract was concluded between the applicants and respondents whereby the applicants abandoned any further right of claim, against the respondent arising from the applicant's employment.

The amount received by each applicant was acknowledged by each applicant as being in full and final settlement of all claims arising from their employment.

From the document (Annexure E1) it is clear that the issue of notice remains unsettled. This is the issue that has to be settled by respondent. For example in Solomon Dlamini's document it states as follows: "I confirm if have no further claim" Then there are words written in hand 'BAR MY 44 DAY NOTICE'. To me it is clear that respondent was admitting liability in so far as notice is concerned.

From the foregoing, it is my view that each of the documents is a written contract by which each applicant contractually abandoned all claims against respondent arising from their employment including respondent's decision to terminate their services. The only claim they did not abandon is payment of their notice pay.

In my view the respondent's point in limine is well founded. I would therefore uphold the point in limine. However, respondent is to pay notice pay as this was part of the agreement. Respondent should pay each applicant in accordance to the days reflected on their agreements documents (Annexure E1).

Accordingly the application is dismissed in its entirety. No order as to costs.

KENNETH P. NKAMBULE

JUDGE - (INDUSTRIAL COURT)