

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 501/2005**

In the matter between:

**PUBLIC SERVICE PENSION FUND  
APPLICANT**

and

**WILSON DLAMINI  
RESPONDENT**

**1<sup>ST</sup>**

**MR. NYATHI - DEPUTY SHERIFF  
RESPONDENT**

**2<sup>ND</sup>**

**CORAM:**

<b>NKOSINATHI NKONYANE</b>	<b>:</b>	<b>ACTING JUDGE</b>	
<b>DAN MANGO</b>	<b>:</b>	<b>MEMBER</b>	
<b>GILBERT NDZINISA</b>	<b>:</b>	<b>MEMBER</b>	
<b>FOR APPLICANT</b>	<b>:</b>	<b>N. J. HLOPHE (MAGAGULA ATTORNEYS)</b>	<b>&amp; HLOPHE</b>
<b>FOR RESPONDENT</b>	<b>:</b>	<b>J. MAVUSO</b>	
<b>COMPANY)</b>		<b>(JUSTICE M. MAVUSO &amp;</b>	

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**R U L I N G - 17/03/06**

[1] This is an application brought before the court on a certificate of urgency for an order in the following terms:

1) *Dispensing with the normal provisions of the rules of this Honourable court as relate to form, service and time limits and hearing the matter as an urgent one.*

2) *Staying execution or further execution of the writ of execution dated the 12<sup>th</sup> December 2005 pending the outcome of this matter.*

*Declaring that the judgement of the Industrial Court delivered on the 27<sup>th</sup> September has been fully satisfied by Applicant through paying the sum of E145,933.00.*

4) *Declaring the writ of execution dated the 12<sup>th</sup> December 2005 a nullity and of no force or effect.*

5) *Directing that prayers 2, 3 and 4 hereinabove operate as a rule nisi with immediate and interim effect returnable on a date to be determined by the above Honourable Court.*

*Granting Applicant the costs of this application.*

*Granting Applicant any further or alternative relief.*

[2] In its Replying Affidavit the Respondent raised the points of law. These points were argued before the court. The court is now called upon to make a ruling on the points of law raised.

[3] The two preliminary points raised were that; this court has no jurisdiction to entertain the present application, and secondly that the Applicant claims to have paid the 1<sup>st</sup>

Respondent in full an final settlement yet he failed to attach the original payment cheque to allow the court to determine whether an offer for compromise was made before the cheque was accepted.

[4]            BACKGROUND

In order for one to appreciate the issues involved here, a brief background is necessary. The present 1<sup>st</sup> Respondent, Wilson Dlamini obtained a judgement against the present Applicant on the 27<sup>th</sup> September 2001. The present Applicant against whom the judgement was issued appealed. The Industrial Court of Appeal however confirmed the judgement of the court *a quo*.

[5]            It seems that there was no agreement between the parties as to the exact amount payable to the present 1<sup>st</sup> Respondent in terms of the court order. The present Applicant paid the 1<sup>st</sup> Respondent the sum of E145.933.00 as a full and final settlement of the claim. The 1<sup>st</sup> Respondent says that according to its own calculations, it should be paid more than the said figure of E145,933.00 and it further denies that that amount was paid to it in full and final settlement.

[6]            The court will now address the preliminary points raised ad

seriatim:

a) jurisdiction:

It was argued on behalf of the 1<sup>st</sup> Respondent that this court has no jurisdiction to grant the order brought in prayer 3. The argument by Mr. Mavuso suggested that if the court were to grant the declaratory order, it would amount to interpreting the judgement of the Industrial Court of Appeal, and that this court has no such powers.

[7] With respect to Mr. Mavuso, we disagree with his submissions. This court does have jurisdiction to issue declaratory orders. This court has the jurisdiction in terms of Section 8 (1) and 8 (3) of the Industrial Relations Act No. 1 of 2000.

[8] Section 8 (1) states that:

“The court shall subject to sections 17 and ..... have exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of an application, claim or complaint or infringement of any of the provisions of this, the Employment Act, the Workmen’s Compensation Act, or any other legislation which extends jurisdiction to the court or in respect of any matter which may arise at common law between an employer and employee in the course of employment of between the employer and employees’

association and a trade union, staff association or between an employee's association a trade union, a staff association, a federation and a member thereof." (my emphasis).

[9] Section 8 (3) states that:

*"In the discharge of its functions, under this Act the court shall have all the powers of the High Court, including the powers to grant injunctive relief."*

[10] This section of the Industrial Relations Act therefore points the question of jurisdiction beyond any doubt. It was not argued that the High Court has no power to issue a declaratory order.

**The first point of law must therefore be dismissed.**

[11] Failure to file original payment cheque:

It was argued on behalf of the 1<sup>st</sup> Respondent that the failure by the Applicant to attach the original cheque used to pay the 1<sup>st</sup> respondent was fatal to the Applicant's application as the court cannot be in a position to determine that there was an offer for compromise which was made before the 1<sup>st</sup> Respondent accepted the cheque.

- [12] It was argued on behalf of the Applicant that the cheque was accepted as it was explained that it was payment in full and final settlement.
- [13] It became clear to the court this point could not be resolved unless the merits are gone into.
- [14] This point will also be dismissed as it cannot be determined by the court unless the merits of the application are addressed.
- [15] The court will accordingly make an order that the points of law are to be dismissed. A date to be set for the matter to be argued on the merits.
- [16] No order for costs is made.

The members agree.

**NKOSINATHI NKONYANE A-J**  
**INDUSTRIAL COURT**