

## IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 317/2002

In the matter between:

**BUNYE BEMASWATI BUILDING CONSTRUCTION**      **Applicant**

and

**WINILE DLAMINI**      **1<sup>st</sup> Respondent**

**BARNABAS MAVUSO**      **2<sup>ND</sup> Respondent**

**MAKHOSONKHE MAKHANYA**      **3<sup>rd</sup> Respondent**

**SAM MGABHI**      **4<sup>th</sup> Respondent**

**THEMBA MTSETFWA**      **5<sup>th</sup> Respondent**

**CORAM:**

**P. R. DUNSEITH:      PRESIDENT**

**JOSIAH YENDE:      MEMBER**

**NICHOLAS MANANA:      MEMBER**

**FOR APPLICANT:      S. HLOPHE**

**FOR RESPONDENTS:      J. MAVUSO**

### **J U D G E M E N T -13/11/2007**

1. The court entered judgment against the Applicant on the 16<sup>th</sup> July 2007 for payment of the total sum of E28,176-85 to the Respondents.

2. The Applicant tendered payment of the sum of E14,876-85, and withheld payment of the balance of E13,300-00 on the basis that it was setting off certain claims in respect of rentals owing to it by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

3. The claim for rentals is actually a claim for unliquidated damages for holding over. The Applicant alleges that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not vacate their company accommodation after their employment with the Applicant terminated, and the Applicant is entitled to be compensated.

4. The Respondents rejected the tender of part-payment and their representative issued a writ of execution to recover payment of the full amount of the judgment debt. The Applicant now applies to court for an order setting aside the writ of execution and, pending final determination of the application, an order that execution be stayed.

5. It is trite law than an unliquidated claim for damages cannot be set off against a judgement debt.

**Colonial Government v Bonner (1904) 21 SC 347.**

**Janowsky v Payne 1989 (2) SA 562 (C)**

6. The Applicant must first obtain judgement on its claim before set-off may operate. There is no evidence that it has reported a dispute in terms of Part V111 of the Industrial Relations Act 2000 or that it intends to institute legal proceedings in a court of appropriate jurisdiction. There is no legal basis disclosed upon which the court may prevent the Respondents from executing upon the judgement which they have obtained.

7. The application has no merit and cannot succeed.

The application is dismissed with costs.

**PETER R. DUNSEITH  
PRESIDENT OF THE INDUSTRIAL COURT**