

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 290/2015

In the matter between

DUMSILE SIMELANE

APPLICANT

And

NHLANHLA SHONGWE

1ST RESPONDENT

**PRINCIPAL SECRETARY, MINISTRY OF
PUBLIC WORKS AND TRANSPORT**

2ND RESPONDENT

ACCOUNTANT GENERAL

3RD RESPONDENT

THE ATTORNEY GENERAL

4TH RESPONDENT

Neutral citation : Dumsile Simelane v Nhlanhla Shongwe and 3 Others
(290/2015) [2017] SZIC 126

CORAM:

SIPHO L. MADZINANE : Acting Judge,
(Sitting with D.P. Mmango and
A.T. Ntiwane)

MATTER HEARD : 23/10/2017

DELIVERED : 02/11/2017

J U D G M E N T

1. The Applicant has filed an application for determination of an unresolved dispute against the Respondents. The Applicant's claim is actually a delictual claim against the Respondents.
2. Briefly, the Applicant's claim emanates from an alleged damage and loss of her personal and household items whilst being transported by her employer's motor vehicle home. It being alleged that her household items were damaged and her clothing got lost whilst being transported home.
3. The Court may point out that the Respondents deny liability. This Court need not advert to the evidence of the matter as it will not deal with the matter on its merits at this stage. It will only deal with the question of jurisdiction.
4. When the trial was about to commence, this Court *mero motu* sought assistance from the parties whether or not it has jurisdiction to determine this matter. The Court directed both Counsels to guide the court so that it does not find itself in an embarrassing situation of exercising powers it does not have in law.

5. The Court may point out that both Counsels have filed substantive written submissions which are quite helpful to shed light to the court on the question of jurisdiction. The Court is grateful to both counsel for the Applicant and Respondents for the guidance given to the court in determining the question of jurisdiction.

6. The jurisdiction of the court is provided for in **Section 8(1) of the Industrial Relations Act 2000** as amended.

Section 8(1) *“The Court shall, subject to Section 17 and 65, 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 cause of employment or between an employer or employer association and a trade union, or staff association or between an employee’s association, a trade union, a staff association, a federation and a member thereof”.

6.1. In the case of Meshack Masuku V Swaziland Government – Industrial Court Case No. 103/1998, the Industrial Court in dealing with a claim like in this matter stated as follows:

“Although delictual and contractual liability may sometimes co-exist a party has a choice in the circumstances to found his claim on either. Whereas this claim is specifically pleaded to depend on a contract not only for its origin but also for its contents then the cause of action necessarily excludes any delictual liability that may have arisen in respect thereof since a party is held to stand or fall on its own pleadings. It cannot be said then as has been argued by the respondent that, in such circumstances, the claim is one of delict to the disadvantage of the applicant. The existence of a collateral legal duty in delict and in contract should make no difference once a party as in this case has elected to found its case in contract”.

6.2. In the case of Mondi Limited V Chemical, Energy, Paper, Printing, Wood and Allied Workers Union (CEPPWAWU) And Another – Case No. D622/2002 at paragraph 25 and 28 Francis J held as follows when dealing with the question that was *mero motu* raised by this court i.e. whether the labour court has jurisdiction to deal with a delictual damages claim;

(25) *“Civil claims in protected strikes are not permissible unless the act in contemplation or in furtherance of a strike or a lock-out is an offence. This Court has jurisdiction to hear a claim in a strike that does not comply with the provisions of the Act.*

An employer may in a protected strike recover the monetary value of the payment of kind at the request of the employee by way of civil proceedings instituted in the labour court. It can interdict any unlawful acts committed in a protected strike. It is clear from the provisions of the ...of the Act that the labour court has exclusive jurisdiction to order payment of just and equitable compensation for any loss attributed to the strike...

(26) *I fail to understand why the labour court is permitted to hear delictual claims in unprotected strikes but where the strike is protected and the act complained of is an offence, it does not have the requisite jurisdiction.*

(28) *The conclusion that I arrive at is that the labour court does have jurisdiction to adjudicate delictual claims arising out of labour disputes as envisaged (Section 8 of the Industrial Relations) Act. (Underlining being this court's additions and emphasis).*

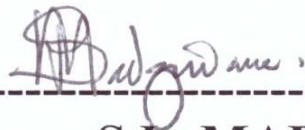
6.3. The Court notes that the Section 68 of the South African legislation is in **pari materia** with **Section 8 of The Industrial Relations Act 2000** as amended in Swaziland. Accordingly, the position stated in the above judgement is applicable in this matter.

7. This Court is also alive to the fact that the matter was referred to this Court pursuant to a judgment of the High Court which Court found that the Industrial Court is the Court with jurisdiction in this matter.

Further, both parties are in agreement that this honourable Court has got jurisdiction in delictual claims.

8. Accordingly, it is the finding of the Court that it has got jurisdiction to determine the delictual claim between the parties in this matter.

The Members agree.



S.L. MADZINANE
ACTING JUDGE – INDUSTRIAL COURT

For Applicant : Mr. C. Bhembe
(Bhembe & Nyoni Attorneys)

For Respondent : Ms. N. Xaba
(Attorney General's Chambers)