



IN THE INDUSTRIAL COURT OF ESWATINI

HELD AT MBABANE

CASE NO: 217/19

In the matter between:

SAKHILE TSABEDZE

Applicant

And

MAKHUBELA FARMERS (PTY) LTD

Respondent

Neutral citation: Sakhile Tsabedze v Makhubela Farmers (Pty) Ltd (217/19)
[2019] SZIC 95 (08 October 2019)

Coram: **M. THWALA AJ**
(Sitting with D. Mmango & E.L.B. Dlamini, Nominated Members)

Heard: 02 October 2019

Delivered: 08 October 2019

RULING

Introduction

[1] On the 2nd October 2019, this Court heard arguments from Counsel regarding two (2) points **in limine** which had been raised by the Respondent, **viz:**

1.1 Lack of Jurisdiction; and

1.2 Time Bar.

[2] In elucidating the above two (2) points, Mr Fakudze, who appeared on behalf of the Respondent submitted, firstly, that the Industrial Court's Jurisdiction to entertain disputes arising out of fixed term contracts of employment was ousted by **Section 35(1) (d) of the Industrial Relations Act, 2000(As Amended)**.

[3] The full section was cited by Mr Fakudze in his Heads of Argument. However, in the course of the hearing this Court raised issue with Mr Fakudze regarding the ability of the Court to make a determination of such a defence without having first heard the Respondent's oral evidence.

[4] It was at this point that Mr Fakudze conceded, rightly so, that in almost all the cases which he cited as authority, **Section 35(1) (d)** was raised through applications for Absolution from the Instance, i.e. moved by the respondent in the course of a trial. **See the cases of Msombuluko Mahlalela & 15 others v Royal Swaziland Sugar Corporation IC Case No. 239/99; Nkosinathi Dlamini v Tiger Security (Pty) Ltd IC Case No. 289/2002 and Stephen Mazibuko v Eagle’s Nest (Pty) Ltd IC Case No. 225/2001.** Mr Fakudze responded to this by abandoning the supposed lack jurisdiction point.

[5] Having abandoned the point on the court’s jurisdiction, Mr Fakudze then proceeded to argue his client’s case on the question of statutory prescription as enunciated under **Section 76 (2)** of the **Industrial Relations Act, 2000 (As Amended)** which provides as follows:

A dispute may not be reported to the Commission if more than eighteen (18) months has elapse since the issue giving rise to the dispute arose.

[6] In **Jameson Thwala v Neopac (Swd) Ltd IC Case No 18/98**, the Court there held that “**issue giving rise to the dispute**” bears the same meaning in a legal context as the term “**cause of action**”. Indeed, Nduma. J, pronounced that where an employee is claiming for underpayment arising

out of a promotion, then the legal dispute arose on the first month immediately following the employee's promotion.

[7] The aforesaid principle was upheld by Nkonyane. J, in the matter of **Cyprian Mabuza v Caritas Swd. IC Case No. 591/06**, which was cited to the Court by Mr Vilakazi. Of course, this Court is aware that Nkonyane. J, refused to uphold this point of law on prescription, however, this was on grounds that are not relevant for present purposes.

[8] For the following foregoing reasons therefore, it is hereby ordered as follows;

8.1 That, Respondent's point of law as to the Court's lack of jurisdiction is hereby dismissed;

8.2 That, Respondent's point of law regarding Applicant's claim for , Compensation as Acting Clerk and Underpayment for Rations is upheld;

8.3 This matter is referred to the Registrar for Allocation of a Date of Hearing on Applicant's below-mentioned claims, **viz;**

- (i) Notice Pay;
- (ii) Additional Notice Pay;
- (iii) Severance Allowance; and
- (iv) 12 months Compensation for Unfair Dismissal.

There is no order as to costs. The Members agree.

M M.THWALA
ACTING JUDGE

For the Applicant: Mr F Vilakazi.

For the Respondent: Mr A Fakudze.