



**IN THE INDUSTRIAL COURT OF ESWATINI**

Case No. 118/2020

In the matter between:

**MATSAPHA TOWN COUNCIL**

Applicant

And

**AON SWAZILAND UMBRELLA RETIREMENT FUND**

1<sup>st</sup> Respondent

**MATSAPHA TOWN BOARD (FUND)**

**KHOLWAPHI DLAMINI-MDZINISO**

2<sup>nd</sup> Respondent

**Neutral citation:** Matsapha Town Council v Aon Swaziland Umbrella Retirement Fund and Another (2020) [118/2020] SZIC 80 (26 June 2020)

**Coram:** Nsibande JP  
(Sitting with N.R. Manana and M.P. Dlamini  
Nominated Members of the Court)

**Date Heard:** 15 June 2020

**Date Delivered:** 26 June 2020

## RULING

- [1] The Applicant, a Local Government Authority established in terms of the **Urban Government Act, 1969**, approached the Court on an urgent basis for an order in the following terms:
- (1) *“Dispensing with the usual forms and procedures relating to the institution of these proceedings and allowing the matter to be heard and enrolled as one of urgency;*
  - (2) *Interdicting the 1<sup>st</sup> Respondent from making payment in the sum of E98063.00 to the 2<sup>nd</sup> Respondent in respect of the 2<sup>nd</sup> Respondent’s pension withdrawal claim pending finalisation of a claims (sic) based on the fraudulent misrepresentation and breach of contract to be instituted by the Applicant against the 2<sup>nd</sup> Respondent within seven(14) (sic) days following the verification of the by (sic) Applicants academic qualifications by the **Eswatini Higher Education Council**;*
  - (3) *That prayers 1 and 2 operate with interim and immediate effect from the first day of enrolment of this matter;*
  - (4) *That a Rule Nisi do hereby issue calling upon the Respondent to show cause why prayer 1,2,3 and 5 should not be made final;*
  - (5) *Costs of suit in the event of opposition;*
  - (6) *Any further and/or alternative relief.”*
- [2] The first Respondent is the AON Swaziland Umbrella Retirement Fund – Matsapha Town Board Fund, a Retirement Fund duly registered in terms of the **Retirement Funds Act of 2005**.

- [3] The second respondent is Kholwaphi Dlamini-Mdziniso an adult Swazi female of Mbabane. The second respondent is a former employee of the Applicant.
- [4] The applicant's application is essentially for an anti-dissipation interdict against the respondents. The first respondent is said to hold a sum of E98063.00 due to the second respondent, being in respect of her pension benefits. The Applicant intends to institute proceedings against the second respondent for breach of contract and unjust enrichment due to fraudulent misrepresentation amounting to a total of E886.042.33 (eight hundred and eighty-six thousand and forty-two Emalangeni, thirty three cents).
- [5] The Applicant bases its application on **Section 54(7) of the Urban Government Act** which gives it the right to attach an employee's pension in respect of any debt or claim made by the applicant. Further, it submits that **Section 32(2) of the Retirement Funds Act** entitles it to make a deduction from pension an amount representing its loss suffered due to the unlawful conduct of a member of a retirement fund. Consequently, it seeks to interdict first respondent from handing over to second respondent her retirement benefits pending determination of the claim to be instituted.
- [6] The first respondent has not opposed the application while the second has done so and has filed her answering papers accordingly. When the matter first came before Court, we raised, *mero motu*, the issue of the Industrial Court's jurisdiction to hear an application of this nature given that the order sought at this stage, while affecting the second respondent

is primarily against the first respondent which has no employer/employee relationship with the applicant.

[7] When the matter was argued the parties addressed us on the jurisdiction issue first. The applicant submitted that the second respondent's pension benefit arises out of an employer-employee relationship and that consequently it is an employment benefit and the Court therefore had the jurisdiction to hear the matter. Mr Tengbeh for applicant implored the Court to find that the pension benefit arises in the course of employment because the second respondent would not have joined the Fund had she not been employed. He argued that the fact that the **Retirement Funds Act** refers to a Court being the High Court does not necessitate that an application of this nature should be brought before the High Court because this was not an application for attachment as envisaged by **Section 32(2) of the Retirement Funds Act 2005**.

[8] The second respondent's representative submitted that the High court is the correct court that the applicant ought to have brought this application; that the **Retirement Funds Act** restricts the jurisdiction of this court by setting out that court it refers to the High Court second respondents representative further submitted that there was no longer an employer/employee relationship between the parties.

[9] **Section 8 (1) of the Industrial Relations Act 2000** (as amended) provides as follows:

*"The court shall, subject to sections 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's association and a trade union, or staff association, a trade union, a staff association, a federation and a member thereof.*

[10] On the matter before the court and in so far as **Section 8 (1)** of the **Industrial Relations Act** refers to any matter which may arise at common law between an employer and employee in the cause of employment, it is quite clear that issues relating to pension funds do not arise at common law between employer and employee. As stated in **Alfred Maia and The Chairman, The Ministry of Works and Transport, The Attorney General High Court Case No. 1070/15**, this phrase refers to Common Law remedies the law avails an employee or an employer which may attach to issues that may arise between the two such as for instance an employee committing a common law offence such as absenteeism or theft or an employer repudiating a contract of employment. The first respondent is administered in terms of the **Retirement Funds Act 2005** which does not extend jurisdiction to this court. In fact, that Act clearly states that by court, it refers to the High Court.

[11] Further, the order sought by the applicant must primarily be carried out by the first respondent. There is no employer/employee relationship between the applicant and first respondent. The first respondent is regulated under the retirement Funds Act and is therefore outside the

scope and ambit of the Industrial Relations legislation which endows jurisdiction on this court.

[12] From totality of the aforestated reasons we find that we have no jurisdiction to hear and determine the matter. Consequently, the application is dismissed with costs.

The Members agree.



**S. NSIBANDE**

**PRESIDENT OF THE INDUSTRIAL COURT**

**For Applicant:** Mr FM Tengbeh (SV Mdladla & Associates)

**For Respondent:** Mr N. Gumede