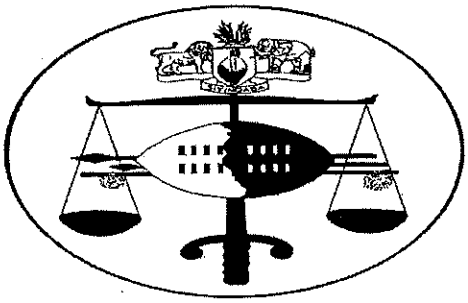

IN THE INDUSTRIAL COURT OF APPEAL OF ESWATINI

Case Numbers 14/2021 & 18/2021

In the matters between:

(1) STANDARD BANK OF ESWATINI **Appellant**

and

FREEMAN LUHLANGA **Respondent**

(2) NHLANGANO TOWN COUNCIL **Appellant**

and

JEREMIAH KUHLASE & 4 OTHERS **Respondent**

NEUTRAL CITATION: ***Standard Bank of Eswatini v Freeman Luhlanga, and Nhlangano Town Council v Jeremiah Kuhlase & 4 Others (Consolidated) (11 & 18/2021) [2022] SZICA 8 (23 August 2022)***

CORAM: NSIBANDE JP, VAN DER WALT and NKONYANE JJA

HEARD: 9 May 2022

DELIVERED: 23 August 2022

Summary

Appeal to Industrial Court of Appeal – appealability of decisions – right of appeal lies against decision by President of Court or Judge on a matter of law

Appeal to Industrial Court of Appeal – appealability of decisions – irrelevant whether decision appealed against is final or interlocutory in nature or in effect - only requirement is that appeal is on a question of law

Appeal to Industrial Court of Appeal – appealability of decisions – right to appeal as of right and leave to appeal not required

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RULING

Cur adv Vult
(Postea: 23 August 2022)

VAN DER WALT, JA

[1] The above matters were consolidated for purposes of a Ruling since an identical legal issue for determination had arisen in each, to wit appealability of interlocutory orders, in respect of which there are conflicting judgments. The Court granted leave to the parties to file supplementary Heads of Argument thereon if they so wished, which they did. As good fortune would have it, Counsel appearing in both matters were the same being Mr Z Jele on behalf of the Employer Appellants and Mr A Dlamini on behalf of the Employee Respondents, which served significantly to expedite the proceedings.

A THE ISSUE AND SUBMISSIONS IN RESPECT THEREOF

[2] It was common cause that the decisions appealed against, which pertain to the question whether certain disciplinary hearings had been time barred, are interlocutory in nature.

[3] The contentious point *in limine* was formulated as follows in both Notices to Raise Points of Law:

> ***"1. The above Honourable Court has no jurisdiction to entertain the Appellant's appeal on the basis that an appeal to the above Honourable Court lies only on final judgments of the Industrial Court.***
>
> ***2. It accordingly is submitted that the appeal is improperly before the Honourable Court and ought to be dismissed."***

[4] Mr Dlamini submitted to the effect that:

4.1 Even though the Industrial Relations Act, 2000 (hereinafter referred to as the **"2000 IRA"**) does not contain any express provision which precludes jurisdiction on interlocutory matters, only final judgments are appealable as is the case in the Supreme Court; this is the derivative import of **section 20(1)** of the **2000 IRA** which reads:

"There is established an Industrial Court of Appeal which shall have the same powers and functions as the Court of Appeal but shall only deal with appeals from the Industrial Court."

4.2 The powers of the Supreme Court, in turn, is described in the Constitution, 2005 as:

"Appellate jurisdiction of Supreme Court

147. (1) An appeal shall lie to the Supreme Court from a judgement, decree or order of the High Court –
(a) as of right in a civil or criminal cause or matter from a judgement of the High Court in the exercise of its original jurisdiction; or
(b) with the leave of the High Court, in any other cause or matter where the case was commenced in a court lower than the High Court and where the High Court is satisfied that the case involves a substantial question of law or is in the public interest."

4.3 The Court of Appeal Act, 1954 and the Appeal Court Rules, 1971 which apply to the Supreme Court,[1] require that leave to appeal is to be sought in interlocutory matters.

4.4 Matters should not be adjudicated piecemeal and should it have to be considered whether an interlocutory order is final in effect or not, the question arises which yardstick is to be employed.

4.5 Applying the provisions in the Constitution,| the **2000 IRA**, the Appeal Court Act and Rules, it is clear, in the context of labour disputes, that:

[1] Reference herein to the Supreme Court includes reference to the Court of Appeal, as it then was known

4.5.1 Appeals from the Industrial Court to the Industrial Court of Appeal lie only against final judgments of the Industrial Court; and

4.5.2 With the leave of the Industrial Court, in any other case which may include interlocutory orders.

4.6 The Roman Dutch common law shall be the law applicable in Eswatini save insofar as may be modified by statute [2] and interlocutory orders are only appealable with leave.

4.7 In support of the above, Mr Dlamini relied on the cases of ***Swaziland Fruit Canners (Pty) Ltd v Thulisile Mngomezulu, Industrial Court of Appeal Case No 01/2011*** and ***The Attorney General v Thabo Mgadlela Dlamini (10/2019) [2019] SZICA 13 (16 0ctober 2019)*** as authority for the proposition that this Court is precluded from hearing an unfinished or uncompleted matter from the Court below.

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[2] **Section 252** of the Constitution. Mr Dlamini also referred to the case of ***Umcebo Mining (Pty) Ltd v USA Distillers (Pty) Ltd*** **(1890/2012) [2017] SZHC 202 (6th October 2017)** which in turn referred to a **Transvaal Proclamation No 4 of 1907** dated 22nd February 1907 – it appears that the court therein was unaware of the **Eswatini Proclamation No 11 of 1905** which is couched in similar terms

[5] Mr Jele's submissions were to the effect that:

5.1 The key lies in the use of the word "***decision***" in **section 19(1)** ["***There shall be a right of appeal against a decision of the Industrial Court, or of an arbitrator appointed by the President of the Industrial Court under section 8 (8) on a question of law to the Industrial Court of Appeal.***"] The Legislature, by using this word, clearly intended to include interlocutory orders, else the Legislature would have been more explicit and employed the term ***"final judgment."***

5.2 Further, **sections 19(6)** ["***Any appeal from a decision or order of the Court made in terms of subsection (l) shall be heard by the Industrial Court of Appeal"***] and **21(1)** [***Subject to section 19(1), the Industrial Court of Appeal shall have power to hear and determine any appeal from the Industrial Court***] refer to "***any appeal***" and in using this phrase ***"any appeal"*** the Legislature was not prescriptive as to the nature of the appeal and intended that this Court should exercise jurisdiction over any appeal.

5.3 As regards the difference between a ***"judgment"*** and a ***"decision"***:

5.3.1 The Supreme Court in ***Swaziland Building Society v Umzimnene Investments (Pty) Ltd***[3] pointed out that that "***judgment***" has a general meaning as well as a technical meaning.

5.3.2 In ***Small Enterprise Development Co v Phyllis Ntshalintshali***[4] it was concluded that: ***"The operative word in the afore-quoted section is "decision." This word does not seem to me to bear the same technical meaning or import attached to terms like "judgement, order or decree", used under the Common Law or the rules of the civil courts."***

5.4 Proceeding on the mutual premise that the Roman Dutch common law shall be the law applicable in Eswatini save insofar as may be modified by statute,[5] the relevant Roman Dutch common law position, as summarised in **Steytler NO v Fitzgerald,**[6] was that an appeal was allowed from three classes of "*sentences*" only being (1) a final or definitive sentence; (2) a sentence having the force of a final or definitive sentence (or interlocutory sentences having the force of definitive sentences); and (3) interlocutory sentences strictly so-called

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[3] ***Appeal Case No 16/09*** at Paragraph [9]
[4] ***Industrial Court of Appeal Case No 8/2007,*** Paragraph [11]
[5] **Section 2** of the General Administration Proclamation No 11 of 1905 and **section 252(1)** of the Constitution, 2005. According to the Heads of Argument the Proclamation became effective on the 22nd February 1907; however, the Court's copy of the General Administration Act No 11 of 1905 has as its date of commencement the 22nd February 1905
[6] **1911 AD 295**

which the Judge at any time may vary or revoke but which when once given effect to or executed, are in the nature of the case irreparable. When the Legislature stipulates that no appeal will lie from an interlocutory order except with the leave of the Judge, it only refers to such interlocutory order strictly so-called, the execution of which is not irreparable in the definitive sentence.

5.5 These principles were expounded in the well-known South African cases of **Pretoria Garrison Institutes v Danish Variety Products (Pty), Limited,**[7] **South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd**[8] (***"In a wide and general sense the term "interlocutory" refers to all orders pronounced by the Court, upon matters incidental to the main dispute, preparatory to, or during the progress of, the litigation. But orders of this kind are divided into two classes: (i) those which have a final and definitive effect on the main action; and (ii) those, known as "simple (or purely) interlocutory orders" or "interlocutory orders proper', which do not")*** and **Zweni v Minister of Law and Order.**[9] It was held in the latter case that: ***"A "judgment or order" is a decision which, as a general principal, has three attributes, first the decision must be final in effect and not susceptible of alteration by the***

[7] 1948 (1) SA 839 (A) at 847
[8] 1977 (3) SA 534 (A)
[9] 1993 (1) SA 523 (A) at 535

court of first instance; second it must be definitive of the rights of the parties; and, third it must have the effect of disposing of at least a substantial portion of the relief claimed in the proceedings."

5.5.1 The current position in South Africa is that leave to appeal must be obtained in all civil cases.[10] As for appeals to the Constitutional Court, **section 167(6)(b)** of the South African Constitution provides that: ***"a person, when it is in the interests of justice and with leave of the Constitutional Court"***, must be allowed ***"to appeal directly to the Constitutional Court from any other court"*** and thereby established a "***constitutional interests of justice***" standard. As was held in **Tshwane City v Afriforum and Another:**[11] "*The common-law test for appealability has since been denuded of its somewhat inflexible nature. Unsurprisingly so because the common law is not on par with but subservient to the supreme law that prescribes the interests of justice as the only requirement to be met for the grant of leave to appeal. Unlike before appealability no longer depends largely on whether the interim order appealed against has final effect or is dispositive of a substantial portion of the relief claimed in the main application. All this is now subsumed under the constitutional interests of justice standard. The overarching role of interests of justice considerations has relativised the final effect of the*

[10] Court's Note: **Section 7** of Appeals Amendment Act, No 5 of 1982
[11] **2016 (6) SA 279 (CC)**, Paragraph [40]

order or the disposition of the substantial portion of what is pending before the review court, in determining appealability."

5.6 In Eswatini, the appealability of interlocutory orders issued by the High Court has been the subject of considerable discussion, for instance in ***Temahlubi Investments (Pty) Ltd v Standard Bank Swaziland Limited***[12] and the above passage from the **Zweni** case was accepted as constituting part of our law in ***Mfanuzile Vusi Hlophe v The Ministry of Health and Two Others.***[13]

5.7 The initial contention in the Appellants' Heads of Argument with reference to the ***Small Enterprise Development Co*** judgment was that appeals to this Court are permitted in respect of any decision, whether interlocutory or not, provided that it entails a question of law. A subsequent and differently slanted contention was that the law expressed in the **South Cape Corporation** case is still good law and that no leave is required in respect of an interlocutory decision which is final and definitive in effect.

[12] *Supreme Court Civil Appeal Case No. 35/2008*
[13] *(20/2016) [2016] SZSC 38 (30 June 2016)*

5.8 The Court was also referred to the very recent judgment in ***The Registrar of the High Court, Eswatini N.O*** **and** ***The Honourable Chief Justice of Eswatini N.O. v Mduduzi Bacede Mabuza and Mthandeni Dube*** [14]wherein it was held, with reference to **section 147(1)(b)** of the Constitution, that leave to appeal must be granted by the High Court where it had sat in appellate capacity, whereas in terms of **section 14** of the Appeal Court Act, 1954 leave to appeal must be granted by the Supreme Court in respect of interlocutory orders.

5.9 Mr Jele's argument concluded, premised on the reasoning in the judgment in ***Cashbuild Swaziland (Pty) Ltd v Thembi Penelope Magagula***[15] (wherein it was held that that there is not a right of review of Industrial Court decisions by the High Court because the civil and the industrial courts operate parallel), that the Industrial Court of Appeal has the same jurisdictional powers as the Supreme Court; if the Supreme Court has jurisdiction to entertain

[14] *(05/2022)[2022] SZSC 08(06 May 2022)*
[15] *(26B/2020) [2021] SZSC 31 (09/12/2021)*

interlocutory appeals (both at common law and in terms of the statute) then this Court must enjoy the same jurisdiction.

B APPLICABLE LEGAL PERSPECTIVES

[6] The cumulative upshot of the respective submissions is that the parties are understood to be *ad idem* as to a proposition that final Industrial Court decisions are appealable as of right but interlocutory orders strictly so called, with leave to appeal only. At this point there is a divergence, Mr Dlamini contending that such leave should be sought from the Industrial Court and Mr Jele, that same should be sought from this Court.

[7] At first glance this calls for only one issue to be determined, to wit which Court should grant such leave, which would make for a relatively simple and short judgment. However, there are several perspectives that should be taken into account in order to determine whether the common proposition referred to above, is sound in law.

B.1 ROMAN DUTCH COMMON LAW

[8] It is trite that the law of Eswatini is the Roman Dutch common law save insofar as may be modified by statute.

8.1 The Court could find no indication that an appeal restricted to ***questions of law only*** existed in the Roman Dutch common law and Counsel also were unable to assist in that regard.

8.2 Leave to appeal is a statutory phenomenon; pure interlocutory orders strictly so called, at common law were not appealable at all.

8.3 An appeal against an arbitral decision was not permitted in the Roman Dutch Law.[16]

[16] Voet at **4.8.25** – see **Goldschmidt And Another V Folb And Another 1974 (1) SA 576 (T)** at 577A - D

B.2 PERTINENT ESWATINI LEGISLATIVE INSTRUMENTS IN CHRONOLOGICAL ORDER

B.2.1 THE COURT OF APPEAL ACT, No 74 of 1954[17]

[9] **Sections 14** to **17** thereof are relevant for current purposes:

"Right of appeal in civil cases.
14. (1) An appeal shall lie to the Court of Appeal —
(a) from all final judgments of the High Court; and
(b) by leave of the Court of Appeal from an interlocutory order, an order made ex parte or an order as to costs only.
(2) The rights of appeal given by sub-section (1) shall apply only to judgments given in the exercise of the original jurisdiction of the High Court.

Right of appeal from the High Court's civil appellate jurisdiction.
15. A person aggrieved by a judgment of the High Court in its civil appellate jurisdiction may appeal to the Court of Appeal with the leave of the Court of Appeal or upon the certificate of the judge who heard the appeal, on any ground of appeal which involves a question of law but not on a question of fact.

Appeal in special cases.
16. An appeal shall lie to the Court of Appeal where provision is expressly made in an Act for such appeal.

Power to reserve questions of law for opinion of Court of Appeal.
17. In addition and without prejudice to the right of appeal given by this or any other Act, a judge of the High Court may reserve for consideration by the Court of Appeal, on a case to be stated by him, any question of law which may arise on the trial of a suit or matter and may give any judgment subject to the opinion of the Court of Appeal, and the Court of Appeal shall have powers to hear and determine every such question."

[10] In terms of **section 2**, ***"judgment" includes "decree, order, conviction, sentence and decision."***

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[17] i.e., the Act applicable to the Supreme Court, hereinafter referred to as the "Court of Appeal Court Act"

[11] Aspects of note include that:

11.1 **Sections 14** and **15** are headed ***"right of appeal...;"***

11.2 Section **16** provides for an appeal in special cases, where such provision is expressly made in another statute.

11.3 **Section 17** provides for a referral by the High Court of a question of law "... ***which may arise on the trial of a suit or matter...***" i.e. prior to conclusion of the High Court's hearing and the rendering of its judgment.

B.2.2 THE INDUSTRIAL RELATIONS ACTS

B.2.2.1 THE (FIRST) INDUSTRIAL RELATIONS ACT, No 4 of 1980 ("1980 IRA")

[12] This Act created the first court for labour matters, being the **Industrial Court** composed of a Judge (President of the Court) and two nominated members.

[13] **Section 5** thereof, under the composite heading ***"Jurisdiction and right of appeal,"*** in **section 5(2)** provides that: " ***Any matter of law arising for decision at a sitting of the Court and any question as to whether a matter for decision is a matter of law or a matter of fact shall be decided by the President"*** and **section 5(4)** which provides: "***Save that the President's decision made in terms of sub-section (2) shall be appealable to the High Court and from there to the Court of Appeal, no decision or order of the Court shall be subject to appeal to any other Court, but the High Court shall, at the request of any interested party, be entitled to review the proceedings of the Court on grounds permissible at common law."***

[14] The **High Court Act, 1954** in **section 5** thereof provides that the High Court shall be a court of appeal from all magistrate's courts. **Section 5(4)** of the **1980 IRA** therefore created additional appellate powers on the part of the High Court, culminating in a ***"special"*** appeal as intended by **section 16** of the Court of Appeal Act to the Supreme Court, as opposed to appeals to appeals to the Supreme Court in the ordinary course as per **section 14** and/or **section 15.**

[15] The following further aspects materialise as well:

15.1 Appeals are restricted to appeals on questions of law only;

15.2 The **1980 IRA** (and for that matter its successors in 1996 and 2000) does not distinguish between different types of decisions (e.g. final, interlocutory or costs only) but merely refer to ***"decisions,"*** which are not defined in any of these Acts.

15.3 Under the **1980 IRA** a "*double appeal*" was possible i.e. first to the High Court and thence to the Supreme Court;

15.4 The **1980 IRA** did not require leave to appeal in respect of either appeal process.

B.2.2.2 THE INDUSTRIAL RELATIONS ACT, No 1 of 1996 ("1996 IRA")

[16] This Act repealed the **1980 IRA** and *inter alia:*

16.1 In **section 17(1)** created the **Industrial Court of Appeal,** reading: ***"An Industrial Court of Appeal is hereby established;"*** and

16.2 **Section 4** regarding the composition of the Industrial Court, required at least two persons qualified to be judges of the High Court, one of whom shall be President of the Court (the others being called judges) plus two nominated members; a judge and two members shall form a *quorum* of the Court. **Section 5** commenced with: ***"5.(1) The Court shall have exclusive jurisdiction to hear, determine and grant any appropriate relief..."*** and thereafter further spelled out as regards the Industrial Court:

> ***"(3) In the discharge of its functions under this Act, the Court shall have all the powers of the High Court, including the power to grant injunctive relief.***
> ***(4) In deciding a matter, the Court may make any order it deems reasonable which will promote the objects of this Act.***
> ***(5) Any decision or order by the Court shall have the same force and effect as a judgment of the High Court and a certificate signed by the President or judge of the Court shall be conclusive evidence of the existence of such decision or order.***
> ***(6) Any matter of law arising for decision at a sitting of the Court and any question as to whether a matter for decision is a matter of law or a matter of fact shall be decided by the President, or the judge of the Court provided that on all other issues, the decision of the majority of the members shall be the decision of the Court."***

[17] **Section 11(1)** thereof, under the heading ***"Right of appeal or review"*** provided that: ***"There shall be a right of appeal against the decision of the Court on a question of law to the Industrial Court of Appeal."***[18]

[18] In terms of the majority judgment in the ***Cashbuild*** judgment referred to *supra*, such a right of review has fallen away

17.1 This is the first express reference *per se* to an appeal on a question of law.

17.2 An appeal on a question of law, means an appeal in which the question for argument and determination is what the ***true rule of law*** is on a certain matter and for purposes of appeal, includes an instance where Court *a quo* had overlooked a principle of law and failed to apply same because of such oversight.[19]

[18] In the result:

18.1 There no longer was any *"double appeal;"*

18.2 The High Court and the Supreme Court were excised from the equation and there was only one appellate court positioned above the Industrial Court, being the Industrial Court of Appeal; and

[19] See ***Trevor Shongwe v Machawe Sithole and Another [2021] (08/2020) SZICA 1 (1O August 2021)***

18.3 As was the case with the **1980 IRA**, only ***"a decision"*** was stipulated, no distinction was drawn between different types of decisions and there was no reference to leave to appeal.

B.2.2.3 THE INDUSTRIAL RELATIONS ACT, No 1 of 2000 ("2000 IRA")

[19] This Act repealed the **1996 IRA** Act but retained the essence of the previous Act's wording in **section 4** in the new **section 6,** only adding thereto in **section 6(7)** that a Judge alone may hear and decide on a matter before the court if the parties to the dispute so agree. **Sections 5** and **11(1)** of the **1996 IRA** were restated in the new **sections 8** and **19(1).**

[20] The following additions are of particular relevance:

20.1 **Section 20(1)** [expanding on **section 17(1)** of the **1996 IRA**] reads:

> ***"There is established an Industrial Court of Appeal which shall have the same powers and functions as the Court of Appeal but shall only deal with appeals from the Industrial Court."***

20.2 Introduced as **section 21(1):**

"Jurisdiction of the Industrial Court of Appeal.
21.(1)Subject to section 19(1), the Industrial Court of Appeal shall have power to hear and determine any appeal from the Industrial Court."[20]

[21] Of note are that:

21.1 Again, no distinction was drawn between different types of decisions i.e. this is the third time (1980, 1996 and 2000) and consistently for some twenty years, that the Legislator did not deem fit to create or stipulate different categories of decisions.

21.2 The addition of "***any appeal***" as captured under **section 21(1)** would further serve to demonstrate against such distinctions.

21.3 The creation of a specialist court to adjudicate appeals from the Industrial Court, took Industrial Court decisions out of the ambit of the Appeal Court Act, thereby severing any *nexus* between the Industrial Court and the Supreme Court and again underscoring the special nature of appeals against Industrial Court decisions *vis-à-vis* ordinary civil appeals.

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[20] Court's underlining

[22] Of paramount importance are the purposes and objectives of the **2000 IRA**, as set out in **section 4(1)**, which in **section 4(1)(d)** includes to

"***provide mechanisms and procedures for speedy resolution of conflicts in labour relations.***"

22.1 This purpose and objective is echoed in **section 21(2)** which reads that:

> ***"The Industrial Court of Appeal shall where possible, endeavour to determine an appeal referred to in subsection (1) within three (3) months from the date on which it was noted."***

22.2 **Section 4(2)** provides that:

> ***" Any person applying or interpreting any provision of this [Act] shall take into account and give meaning and effect to the purposes and objectives referred to in subsection (1) and to the other provisions of this Act."***

B.2.2.4 SUBSEQUENT AMENDMENT ACTS

(a) The Industrial Relations (Amendment) Act, No 8 of 2000

[23] This Act did not touch upon the issue of appeals. This makes it the fourth time that different types of decisions were not brought into play. (1980, 1996, 2000, and 2000 again.)

(b) The Industrial Relations (Amendment) Act, No 3 of 2005

[24] Of note for current purposes are, as regards appeals:-

24.1 Arbitration was expanded on (an appeal against an arbitral decision was not permitted in the Roman Dutch Law[21]) and **section 19(1)** was amended to read (as underlined and in bold font):

"(I) There shall be a right of appeal against a decision of the Industrial Court, ***or of an arbitrator appointed by the President of the Industrial Court under section 8 (8)*** *on a question of law to the Industrial Court of Appeal;"* and

[21] See Paragraph 8.3 supra

24.2 A new **section 19(6)** was inserted, reading: ***"Any appeal from a decision or order of the Court made in terms of subsection (l) shall be heard by the Industrial Court of Appeal."***[22]

24.3 Again, the Legislature did not distinguish between different types of decisions, be they decisions of the Industrial Court or of arbitrators. This makes it the fifth time that different types of decisions were not brought into play. (1980, 1996, twice in 2000, and 2005.) This amendment also added a second provision, in **section 19(6),** which stipulates "***any appeal,***" echoing the existing **section 21(1).**

(c) The Industrial Relations (Amendment) Acts, No's 6 of 2010 and 11 of 2014

[25] These Acts also did not deal with the issue of appeals.

[22] Court's underlining

B.2.2.5 STATUTORY OR OTHER REFERENCES TO LEAVE TO APPEAL

[26] Since the inception of the industrial courts, there never has been mention of leave to appeal in the relevant statutes. In contrast, both the Court of Appeal Act and the Constitution expressly require leave to appeal in certain instances.

[27] As far as labour matters are concerned, the only provision for leave to appeal is to be found in the **1997** Industrial Court of Appeal Rules, to wit **Rule 9** which provided for an application for leave to appeal ***out of time*** only. (At the time, the Rules regulated the time for filing the notice of appeal. However, **section 19(3)** of the **2000 IRA** subsequently stipulated that the appeal shall be lodged within three (3) months of the date of the decision i.e., it became a statutory requirement in respect of which condonation *via* the Rules was not competent. As a result, **Rule 9** as well as the ancillary **Rules 8, 10** and **17** were held to be inconsistent with said **section 19(3).** [23])

[23] See *Arthur Mndawe and 74 Others v Central Bank of Swaziland, Civil Case No 08 of 2008 dated 27 September 2010*

B.2.3 THE CONSTITUTION, 2005

[28] As regards appeals to the Supreme Court:

28.1 For ease of reference, the wording of **section 147(1)** will be repeated:

> ***"147. (1) An appeal shall lie to the Supreme Court from a judgement, decree or order of the High Court –***
> ***(a) as of right in a civil or criminal cause or matter from a judgement of the High Court in the exercise of its original jurisdiction; or***
> ***(b) with the leave of the High Court, in any other cause or matter where the case was commenced in a court lower than the High Court and where the High Court is satisfied that the case involves a substantial question of law or is in the public interest."***

28.2 The only use of the phrase ***"any appeal"*** is to be found in **section 146(3)** which provides: ***"Subject to the provisions of subsection (2), the Supreme Court has for all purposes of and incidental to the hearing and determination of any appeal in its jurisdiction the power, authority and jurisdiction vested in the court from which the appeal is brought."***[24]

B.3 POSITION IN COMPARATIVE JURISDICTIONS IN AFRICA

[29] From a continental perspective, of the fifteen [15] African jurisdictions with procedural English law heritage,[25] six (6) share Roman Dutch

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[24] Underlining Court's own

[25] Botswana, Eswatini, Ghana, Kenya, Lesotho, Malawi, Namibia, Nigeria, South Africa, South Cameroon, Sierra Leone, Tanzania, Uganda, Zambia and Zimbabwe

common law roots, being Botswana, Eswatini, Lesotho, Namibia, South Africa and Zimbabwe.

29.1 Only three (3) of these being Eswatini, Lesotho and South Africa, have their own appellate labour courts.

29.2 In Eswatini appeals are restricted to questions or points of law; in Lesotho to final judgments and orders;[26] in South Africa, to all final judgments and orders and then only with the leave of the Labour Court or should it be refused, the leave of the Labour Appeal Court.[27] (In Zimbabwe, where appeals are heard by the Supreme Court, an appeal lies in respect of *"any decision"* on a question of law but then only with leave to appeal from the Labour Court or should it be refused, the Supreme Court.[28])

29.3 There does not appear to be any law in the relevant neighbouring jurisdictions which is on all fours with the appellate aspects of the Eswatini labour law. What is instructive is, in Lesotho and South

[26] **Labour Code Order 1992, section 38A**
[27] **Labour Relations Act 1995, section 166**
[28] **Labour Act 1985, section 92F**

Africa which are the only other two relevant jurisdictions with their own appeal courts, the respective Legislators expressly specified final judgments or orders and/or in which instances leave would be required, where applicable.

B.4 INTERPRETATION

B.4.1 GENERAL

[30] The sum and substance of the current exercise is the interpretation and ancillary attributes to be attached to the word ***"decision"*** in **section 19(1).**

[31] The Court should so with due regard to the current principles of interpretation expounded in for instance **Natal Joint Municipal Pension Fund v Endumeni Municipality;** [29] not only the language employed by the Legislature should be taken into account; the proper approach would be to also look at the context, the circumstances under

[29] **2012 (4) SA 593 (A)**

which the provision came into being and all the surrounding facts.

The Headnote thereof aptly summarises the position:

> ***"Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in light of all these factors. The process is objective, not subjective. A sensible meaning to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to and guard against the temptation to substitute what they regard as, reasonable, sensible or business-like for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in contractual context it is to make a contract for the parties other than the one they in fact made. The "inevitable point of departure is the language of the provision itself", read in context and having regard to the purpose of the provision and the background to the preparation and production of the document".***

B.4.2 GRAMMATICAL MEANING OF *"DECISION"*

[32] This concept is not defined in any of the Industrial Relations Acts.

32.1 The **South African Legal Dictionary** [30] defines ***"decision"*** as ***"a judgment or ruling upon some matter at issue."***

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[30] W H Somerset Bell, 2nd Edition 1925

32.2 At the time of creation of the first Industrial Court under the **1980 IRA,** appeals lay against ***"decisions"*** on matters of law first to the High Court and then to then Court of Appeal. Only the presiding judge may decide a matter of law, a prescription that was maintained by the subsequent legislation and which has found application for some forty [40] years since and there can be little doubt that ***"decision"*** *vis-à-vis* appeal refers to the such judicial decision on a matter of law by a judge alone, without involvement of the nominated members.

B.4.3 GRAMMATICAL MEANING OF *"ANY"*

[33] The wording ***"any appeal"*** is used in sections **sections 19(6)** and **21(1)** of the **2000 IRA.** As for the appropriate meaning to be afforded to ***"any"*:**

33.1 The South African Court of Appeal (as it then was) in the case of **Commissioner for Inland Revenue v Ocean Manufacturing Ltd**[31] held that:

[31] **1990 (3) SA 610 (A)** at 618H

"'Any is "a word of wide and unqualified generality. It may be restricted by the subject-matter or the context, but prima facie it is unlimited." (Per Innes CJ in R v Hugo 1926 AD 268 at 271.) **"In its natural and ordinary sense, any - unless restricted by the context - is an indefinite term which includes all of the things to which it relates."** *(Per Innes JA in Hayne & Co v Kaffrarian Steam Mill Co Ltd 1914 AD 363 at 371.)'"*

33.2 The above approach was endorsed by the South African Constitutional Court in **Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Ltd and Another,**[32] wherein it was emphasised that the word is *"a word of wide import."*

B.4.4 CONTEXT, PURPOSE AND OBJECTIVES

[34] The purposes and objectives of the **2000 IRA**, as set out in **section 4,** include to *"provide mechanisms and procedures for speedy resolution of conflicts in labour relations"* and **section 4(2)** obliges the interpreter of the statute to take into account and give meaning and effect to these

[32] **2019 (2) SA 1 (CC),** Paragraph [69]

purposes and objectives. **Section 21(2)** prevails upon this Court to deal with appeals in an expeditious fashion.

B.4.5 PERTINENT INTERPRETATIONS BY ESWATINI COURTS IN CHRONOLOGICAL ORDER

B.4.5.1 [2007] *Small Enterprise Development Co v Phyllis Ntshalintshali,*

[33] Industrial Court of Appeal case referred to by Appellants:

[35] Paragraphs [9] to [15] are of particular relevance:

"[9] Interlocutory orders are generally classified under two categories, namely; (a) simple interlocutory orders and (b) other interlocutory orders that have a definitive and final effect in their application.

[10] Pure or simple interlocutory orders are not appealable whilst those listed under (b) above are appealable, some with leave of the court. A refusal for a stay of execution falls under those orders under (b).

[11] In terms of section 19(1) of The Industrial Relations Act No.1 of 2000 (as amended) (hereinafter referred to as the IRA) "there shall be a right of appeal against the decision of the Court or of the arbitrator on a question of law to the Industrial Court of Appeal."

The operative word in the afore-quoted section is "decision." This word does not seem to me to bear the same technical meaning or import attached to terms like "judgement, order or decree", used under the Common Law or the rules of the civil courts.[34]

[12] Therefore the authorities such as SOUTH CAPE CORPORATION (PTY) LTD v ENGINEERING MANAGEMENT SERVICES (PTY) LTD 1977 (3)

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[33] [*Industrial Court of Appeal Case No 8/2007*] Underlining Court's own

[34] Note: Supreme Court **Rule 2** defines "***judgment***" as to include ***"decree, order, conviction, sentence and decision."***

SA 534 (A) referred to us in argument by counsel for the respondent, DU RANDT v DU RANDT, 1992 (3) SA 281 and BEKKER NO v TOTAL SOUTH AFRICA (PTY) LTD, 1990 (3) SA 159 must be read, interpreted and understood in the context of the relevant rules of court and the Common law under consideration therein. In the last two cases cited above, the Court held that a refusal to stay execution pending appeal is appealable.

[13] In the Republic of South Africa the issue relating to appeals regarding interlocutory orders is governed by Section 7 of the Appeals Amendment Act 105 of 1982. We do not have an Act with similar provisions.

[14] Section 19 (1) of the IRA does not appear to me to require a litigant who is dissatisfied with a decision of the Court a quo to seek and obtain leave of that Court to appeal to this Court. The qualification of course is that it must be an appeal on a decision on a matter of law. I have not been able to find any provision in the IRA that requires a litigant to seek leave of the Industrial Court to appeal to this Court, as is the case in the Rules of the High Court and Supreme Court. Article 147 of the Constitution provides that

"(1) An appeal shall lie to the Supreme Court from a judgment, decree or order of the High Court -

1. *As of right in a civil or criminal cause or matter from a judgment of the High Court in the exercise of its original jurisdiction; or*
2. *With the leave of the High Court, in any other cause or matter where the case was commenced in a court lower than the High Court and where the High Court is satisfied that the case involves a substantial question of law or is in the public interest."*

These provisions of the Constitution are not applicable in these proceedings.

[15] In view of the above, I am unable to agree with the respondent's attorney that this appeal should fail because leave of the Court a quo to appeal to this Court was not sought and obtained."

B.4.5.2 [2009] *Swaziland Building Society v Umzimnene Investments (Pty) Ltd,*[35] Supreme Court case referred to by Appellants:

[36] The following excerpt from *Administrator*, **Cape & Another v Ntshwaqela & Others**[36] was incorporated therein:

[35] [Appeal Case No 16/09 at Paragraph 9]

[36] *1990(1) SA 705 (A)* at 714J-715D:

"In legal language the word judgment *has at least two meanings: a general meaning and a technical meaning. In the general sense it is the English equivalent of the American* opinion, *which is - '(t)he statement by a Judge or court of the decision reached in regard to a cause tried or argued before them, expounding the law as applied to the case, and detailing the reasons upon which the judgment is based'. (Black's Law Dictionary 5th ed sv opinion.) In its technical sense it is the equivalent of order...."*

[37] This underscores the difficulty as to what exact meaning or meanings should be attached to *"judgment."*

B.4.5.3. [2011] ***Swaziland Fruit Canners (Pty) Ltd v Thulisile Mngomezulu,***[37] Industrial Court of Appeal case referred to by Respondents:

[38] It was held therein that:

"[5] From the above facts, and it is indeed common cause the court a quo did not deal with the merits of the application. It should have done so though. The only order that the court made was to dismiss the preliminary point of law raised and did not find either for or against any of the parties on the main application. For all practical purposes, the application remains unfinished or undecided by the court below. In the circumstances of this case, this court cannot entertain this appeal. To do so would be tantamount to interfering in the unfinished business of the court below. This, the court will not do. The proceedings have to be finalised or concluded in the court a quo before this court may hear the appeal.

[6] The facts in this appeal are distinguishable from those in Small Enterprise Development Company and Phyllis Ntshalintshali, Industrial Court of Appeal Case No. 8/2007, unreported judgment delivered on 18th October,

[37] [*Industrial Court of Appeal Case No 01/2011*]

2007. In that case the Industrial Court had concluded the case and had rendered its judgment. An appeal had then been noted against the judgment and an application for the stay or suspension of the execution of the judgment had been made and refused. The appeal before this court was against the said refusal to grant a stay of execution. So plainly, the facts and underlying circumstances in these two cases are vastly dissimilar. The Phyllis Ntshalintshali decision is no authority for the proposition that this court may legitimately hear an appeal on an unfinished or uncompleted matter from the court below."

[39] This judgment, in differing from the ***Small Enterprise Development Co*** judgment, did not address the core questions or refer to authorities and merely sought to distinguish the respective matters on the facts.

39.1 In particular, the following in Paragraphs [11] and [14] of the ***Small Enterprise Development Co*** were not ventilated, being: "*The operative word in the afore-quoted section is "decision." This word does not seem to me to bear the same technical meaning or import attached to terms like "judgement, order or decree", used under the Common Law or the rules of the civil courts,"* and *"[14] Section 19 (1) of the IRA does not appear to me to require a litigant who is dissatisfied with a decision of the Court a quo to seek and obtain leave of that Court to appeal to this Court. The qualification of course is that it must be an appeal on a decision on a matter of law. I have not been able to find any provision in the IRA that requires a litigant to seek leave of the Industrial Court to appeal to this Court, as is the case in the Rules of the High Court and Supreme Court... These provisions of the Constitution are not applicable in these proceedings."*

39.2 Neither **section 4** (purposes and objectives of **2000 IRA**) nor **sections 19(6)** or **section 21(1)** stipulating ***"any appeal,"*** was referred to.

B.4.5.4 [2019] ***The Attorney General v Thabo Mgadlela Dlamini,***[38]

Industrial Court of Appeal case referred to by Respondents:

[40] It was held, on the strength of the **Swaziland Fruit Canners** judgment, that the particular order being appealed against is neither definitive of the rights of the parties nor having the effect of disposing of at least a substantive portion of the relief claimed in the main application.[39]

40.1 Further, it was held, not even a remote attempt has been made by the court *a quo* to deal with the relief claimed in the application placed before it. Also, that it has not been shown that the order being appealed against is final in its effect. For these reasons, the appeal failed.

40.2 It appears, as was the case in the ***Swaziland Fruit Canners*** judgment, that Paragraphs [11] and [14] of the ***Small Enterprise Development***

[38] *[(10/2019) [2019] SZICA 13 (16 October 2019)]*
[39] Paragraphs [16] and [17]

Co were not ventilated and **sections 4, 19(6)** and **21(1)** were not considered in this judgment.

B.4.5.5 [2022] ***The Registrar of the High Court, Eswatini N.O*** **and** ***The Honourable Chief Justice of Eswatini N.O. v Mduduzi Bacede Mabuza and Mthandeni Dube,*** [40] Supreme Court case referred to by Appellants:

[41] Juxtaposition of **section 147(1)** of the Constitution with **section 14** of the Appeal Court Act, was addressed in the following terms:

> ***"[29] For leave to appeal, the judgment, order or ruling appealed against, must be interlocutory with definitive effect. That the rejection by the High Court of objection to the jurisdiction was clearly interlocutory and with definitive effect has not been challenged. In their founding affidavit the Applicants refer to section 14 (1) (b) of the Court of Appeal Act, 1954 as the basis for their application for leave to appeal. The sub-section allows a litigant to appeal "by leave of the Court of Appeal from an interlocutory order ... "given by the High Court in the exercise of its original jurisdiction. In paragraph 10 of their heads of argument the Applicants stated as follows: "It is a trite principle that the right of appeal is exercisable in respect of final judgments. Accordingly only final judgments are susceptible to appeal. Interlocutory orders and /or rulings may not be appealed against without leave of court... "This was stated by the Applicants against the contention of the Respondents that section 14 was unconstitutional in light to section 147 (1) (b) of the Constitution. It needs no concerted argument that Section 14 is not unconstitutional; the section deals with appeals emanating from the High Court while section 147 (1) (b) is concerned with appeals emanating from below the High Court. There is therefore no conflict between the two provisions..."***[41]

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[40] *[(05/2022)[2022]* SZSC *08(06 May 2022)]*

[41] Abbreviation Court's own

[42] The relevance of this conclusion is understood to be that these sections co-exist. It merits mention that **section 147(1)(b)** applies to instances where the case was commenced in a court lower than the High Court; in the labour law hierarchy there is no court lower than the Industrial Court. This would resonate with the conclusion in the ***Small Enterprise Development Co*** case that (at least) **section 147(1)(b)** does not find application.

C ANALYSIS

[43] It appears from the overview above that the attention of this Court in the cases dissenting from the judgment in the ***Small Enterprise Development Co v Phyllis Ntshalintshali*** matter had not been drawn to highly relevant provisions and significant related facets, as a result of which no or insufficient judicial interpretation or weight appears to have been attached thereto.

[44] These apparent oversights[42] include:

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[42] In no particular order

C.1 Roman Dutch common law precedent

[45] A right of appeal that is restricted to a question of law only, apparently was not known in Roman Dutch common law jurisprudence but is a creation of and/or modification by statute.

45.1 An appeal against an arbitral decision was not permitted under Roman Dutch common law and is a creation of statute.

45.2 The question then arises as to how the Roman Dutch common law (such as expounded on for instance in the **Steytler** case, distinguishing between different types of orders) can serve in Eswatini as a source of authoritative reference in respect of statutory appeals confined to questions of law, or in respect of arbitral appeals.

[46] Any such common law principles therefore should be applied with due circumspection.

C.2 Historical statutory precedent

C.2.1 Leave to appeal

[47] The very genesis of appeals from the first Industrial Court established under the **1980 IRA**, was an appeal to the High Court against a decision on a question of law, with no *stated* requirement of ***leave to appeal***, either to the High Court, or thence to the Supreme Court.

47.1 When the Industrial Court of Appeal was created and established, there still was no requirement for leave to appeal enacted by the Legislature.

47.2 This is in contrast to the Court of Appeal Act and the Constitution, i.e. the Legislature is well aware of the existence of such a requirement in respect of other courts, but has not enacted it in respect of the industrial court structures, despite several Industrial Relations Acts and several amendments of the current **2000 IRA.**

C.2.2 Different types of judgments, orders and so forth

[48] Nor was a ***distinction*** ever drawn requiring inquiry whether judgments, orders *et cetera* are final, or interlocutory in any sense, whereas the Legislature is well aware of such differentiation in other courts.

[49] It follows, since the inception of the first Industrial Court over forty (40) years ago, and through the course of some seven (7) enactments, that the Legislator has elected not to introduce these requirements and distinctions into the labour law domain.

C.3 The peculiar nature of an appealable Industrial Court decision

[50] The Court of Appeal Act incorporated ***"decision"*** in its definition of ***"judgment," "judgment"*** to include ***"decree, order, conviction, sentence and decision"*** and, in **section 14** thereof, proceeded to distinguish between ***"final judgments," "an interlocutory order," "an order made ex parte"*** and ***"an order as to costs only."*** However, the following significant distinguishing characteristics, expressed by statute, apply to the Industrial Court:

50.1 In terms of **section 8(1)** of the **2000 IRA** [43] it is the Industrial Court that has ***"... exclusive jurisdiction to hear, determine and grant any appropriate relief ...."*** and factoring in nominated members, this means that Judge does not grant any **relief** on the Judge's own but that there is a composite outcome.

50.2 The *quorum* includes the nominated members unless the parties agree to a Judge hearing the matter without members; however, in the case of a legal issue:-

50.2.1 **Section 8(6)** of the **2000 IRA**[44] provides that:

> ***"Any matter of law arising for decision at a sitting of the Court and any question as to whether a matter for decision is a matter of law or a matter of fact shall be decided by the presiding judge of the Court provided that on all other issues, the decision of the majority of the members shall be the decision of the Court."***

50.2 It would then follow that such decision on a matter of law by the presiding Judge, is the decision of the Court on that legal issue. That

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[43] Preceded by section 5(1) of the **1996 IRA**

[44] Preceded by section 5(2) of the **1980 IRA** and section 4(6) of the **1996 IRA**

decision, in turn, is the decision that is appealable in terms of **section 19(1)** of the **2000 IRA.**

50.3 As set out earlier, an appeal on a question of law means an appeal in which the question for argument and determination is what the ***true rule of law*** is on a certain matter and for purposes of appeal, includes an instance where Court *a quo* had overlooked a principle of law and failed to apply same because of such oversight. (The latter oversight would amount to a wrong decision on a matter of law in that the Court silently proceeded on an unsound basis in law.)

[51] The decision by the Judge on a point of law does not amount to granting or refusing relief sought in the matter before Court:

51.1 Such a decision, for instance as to what the legal requirements for jurisdiction are, would be a final decision of general application to all matters unless and until successfully challenged on appeal to this Court.

51.2 Because such a decision does not amount to the granting or refusing of relief, such a decision is not capable as being categorised as interlocutory or final or so forth; it is the ***judicial pronouncements*** by the Industrial Court (be it constituted by a Judge only or a Judge sitting with nominated members) ***pursuant to and based on a decision on a matter of law and read with the facts of the matter,*** that would resonate with the relief sought and that will be capable of such categorization.

51.3 For instance, when measured against the facts of the particular matter:

51.3.1 A decision by the Judge on the law applicable to jurisdiction, can result in a interlocutory order with final and definitive effect in the form of upholding a challenge to jurisdiction and dismissing an application on that basis; or purely interlocutory such as dismissing a challenge to jurisdiction and proceeding to the merits; or

51.3.2 A decision by the Judge on the law applicable to final interdicts, can result in a final order refusing or granting the relief sought.

[52] The above operate against a theorem to the effect that an appealable decision of the Industrial Court, which can only be a decision on a matter of law, would be susceptible to such categorization. Furthermore:

C.4 Employment of the phrase *"any appeal"* in sections 19(6) and 21(1) of the 2000 IRA

[53] The commensurate meaning to be attached to ***"any"*** is very wide and with reference to the time-honoured quotations in the **Commissioner for Inland Revenue v Ocean Manufacturing Ltd** case *supra,* [45] ***"may be restricted by the subject-matter or the context, but*** **prima facie** ***it is unlimited"*** and ***"In its natural and ordinary sense, any - unless restricted by the context - is an indefinite term which includes all of the things to which it relates."***

53.1 **Section 21(1)** of the **2000 IRA** in particular, under the heading ***"Jurisdiction of the Industrial Court of Appeal,"*** empowers the Industrial Court of Appeal to hear and determine ***"any"*** appeal from the Industrial Court subject only to ***section 19(1)***, i.e., subject to the

[45] **1990 (3) SA 610 (A)** at 618H

limitation to appeals on questions of law only. Nothing in the context of **section 19** suggests that the word ***"any"*** should be restricted in its meaning other than the limitation to questions of law, i.e. the concept of ***"any"*** *prima facie* is unlimited, save for this limitation.

53.2 ***"Any appeal"*** is inconsistent with a *numerous clausus* of categorised decisions such as final and so forth, as are contained in the Court of Appeal Act and the Constitution and the phrase ***"any appeal"*** does not occur in these statutes in the context of what is appealable as of right and what not.

C.5 The apparent purpose of the statute

[54] First and foremost, the relevant purposes and objectives of the **2000 IRA** (***"provide mechanisms and procedures for speedy resolution of conflicts in labour relations"***) and the concomitant obligation resting on the interpreter of the statute to take into account and give meaning and effect to these purposes and objectives, read with the resonating

provision that this Court shall endeavour to determine appeals in a speedy fashion.[46]

54.1 A requirement of a final dimension or an application for leave to appeal, is not commensurate with such speedy resolution and also would have costs implications for litigants.

54.2 This clear roadmap manifestly distinguishes labour matters from ordinary civil matters.

[55] The purposes and objectives of the **2000 IRA,** set a pivotal standard. None of the cases referred to by Counsel refer thereto or to **section 4** of the **2000 IRA** wherein they are set out.

C.6 Right to appeal

[56] **Section 14** of the Court of Appeal Act and **section 19** of the **2000 IRA** bear the headings ***"right to appeal."***

[46] Sections 4 and 21(2)

56.1 A right of appeal attaches to a litigant, and not to a court. Jurisdiction should not be implied or imported in such a fashion as to alter or amend a litigant's right to appeal.

56.2 The powers and functions of the Supreme Court applicable to this Court in terms of **section 20(1)** in our humble view does not include a superimposition regarding the rights of a litigant or an implied amendment of the jurisdictional **section 21(1)**.

56.3 In the Supreme Court, appeals are not restricted to questions of law only, which would indicate another material difference between the respective legislative provisions and which sounds a further note of caution against mechanical superimposition of Supreme Court characteristics such as leave to appeal and different types of judgments and orders.

C.7 Referral of question of law

[57] **Section 17** of the Court of Appeal Act provides for referral by the High Court of ***a question of law that "may arise"*** before it and before rendering judgment therein.

57.1 This would suggest that pure questions of law do not necessarily require some measure of finality or final or definitive effect in the Court *a quo* prior to it being considered on appeal without any further ado.

57.2 Implicit in said **section 17**, is that a party/ies may request the High Court to effect such a referral.

D CONCLUSIONS

[58] The above considerations do not appear to have been drawn to the attention of, or to have enjoyed scrutiny by our courts, save to some degree in the **Small Enterprise Development Co** case, leaving room for holding that the decisions of this Court to the effect that leave to appeal is required in respect of interlocutory orders so strictly called, clearly had been wrongly decided.

[59] On the other hand, the Court is mindful that ***"any appeal,"*** in unrestricted context, may well open the floodgates for direct appeals as of right in respect of incomplete proceedings.

[60] As per the dictates in the **Natal Joint Municipal Pension Fund case** *supra*, where more than one meaning is possible each possibility must be weighed in light of all the relevant factors; the process is objective, not subjective and a sensible meaning to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the statute.

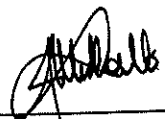
[61] In all the circumstances, it is our considered view that the preponderance of the factors and considerations set out above support the interpretation of the **2000 IRA**, as it currently is worded, that the right of appeal to this Court is fettered only by the single restriction that the appeal shall be on a question of law and that such an appeal lies as of right against any decision of the Industrial Court.

[62] It will then follow that the only condition attached to appeals to this Court, is that the appeal is confined to a question or questions of law. Consequently, it would follow that any cases holding that the different categories of orders and/or leave to appeal apply to appeals to this Court, clearly were wrongly decided and as a consequence, it humbly is so held.

[63] Accordingly, it is the Order of this Court that:

1 The preliminary point raised on behalf of the respective Respondents is dismissed and the appeal is to take its course.

2 No order as to costs.



J.M. VAN DER WALT
JUSTICE OF APPEAL

I agree

S. NSIBANDE
JUDGE PRESIDENT

I agree

N. NKONYANE JA
JUSTICE OF APPEAL

For the Appellant: Mr. A Dlamini of B S Dlamini & Associates

For the Respondent: Mr. Z. Jele of Robinson Bertram Attorneys