

IN THE INDUSTRIAL COURT OF APPEAL OF SWAZILAND

SAVELLS FURNISHERS

Appellant

vs

LUKHELE Dumisa

Respondent

Appeal Case No. 7/2002

Coram Sapire, JP

Matsebula, JA

Maphalala, JA

For Appellant M. SIBANDE

For Respondent P.R. DUNSEITH

JUDGMENT

29-10-2002

This is an appeal from the ruling of the Industrial Court on a special plea filed by the appellant in answer to a claim of the respondent. The appeal arises out in the following circumstances. The respondent reported a dispute arising out of his alleged unfair dismissal, to the Labour Commissioner in terms of Section 57(1) of the Industrial Relations Act. The issue in dispute is the alleged unfair dismissal. The amounts claimed in respect thereof comprise the following: -

1. 1 month notice,
2. Additional Notice
3. Severance Allowance
4. Arrears incentive, and
5. Maximum compensation.

The law is all these elements of damages arise from one cause of action and if the matter were to be adjudicated on the amount awarded would be in respect of all the heads of damages claimed.

2

Before the matter came to court the parties entered into an agreement of settlement recorded in a document that appears at page 12 of the record and is marked "B". The document recites that it

is made under Section G1 of the Industrial Relations Act, 1996 and who the parties thereto were. It further records the issues in dispute. The issues are said to be the several claims to which we have referred earlier. The agreement then goes on to record that the parties have settled their dispute in the following manner, namely, that the employee was to pay the sum of E13 673 for the following:

- (a) one month notice - E5 500.00
- (b) addition 8 days notice - E1 693.00
- (c) sales incentive for 1999 - E 750.00
- (d) Severance allowance for 20 days - E4 230.00
- (e) Sales incentive arrears (1997) E1 500.00

An agreement for settlement of this nature should, for clarity sake, indicate that it is in full and final settlement of the whole dispute as presented to the Labour Commissioner and if there are any reservations this should be recorded. The agreement records that the parties request the Commissioner to forward the agreement to the Industrial Court for registration as an award.

If this is indeed the case and once an award has been made the one claim arising out of the single cause of action for wrongful dismissal the settlement precludes any further proceeding arising out of the same cause of action.

In the present case the Industrial Court found that the agreement, as it did not make an award in respect of the maximum compensation claimed left the matter open for further action thereon. Interpretation of an agreement is a matter of law and in this case we cannot find ourselves in agreement with the court a quo. We rule that the special plea is to be upheld and the award as agreed upon is to be the judgment of the court.

SAPIRE, JP

3

I AGREE

MATSEBULA, JA

I AGREE

MAPHALALA, JA