



IN THE SUPREME COURT OF APPEAL OF SWAZILAND

Held at Mbabane

CIVIL APPEAL NO. 33/ 06

In the matter between

SWAZILAND BREWERIES LIMITED

FIRST APPELLANT

SICELO MABUZA

SECOND APPELLANT

And

CONSTANTINE GININDZA

RESPONDENT

**CORAM: BROWDE AJP
 ZIETSMAN JA
 RAMODIBEDI JA**

HEARD: 6 NOVEMBER 2006
DELIVERED: 16 NOVEMBER 2006

SUMMARY

Court - Jurisdiction - Of the High Court and Industrial Court - Exclusivity of the Industrial Court's Jurisdiction - Section 8(1) of the Industrial Relations Act No. 1 of 2000.

JUDGMENT

RAMODIBEDI JA

[1] The fundamental question which arises for determination in this appeal is a short one and will not

bear elaboration. Does the High Court have jurisdiction in matters provided for under the Industrial Relations Act 2000 ("the Act")? Before determining this issue it is necessary to refer briefly to the relevant facts of the case.

[2] On 15 September 2005 the respondent received a letter from the second appellant dismissing him from the first appellant's employment as a sales representative. This followed disciplinary proceedings instituted against the respondent for fraud and dishonesty allegedly committed in the course of his employment.

[3] On 20 September 2005 the respondent launched an application in the High Court for an order reviewing and setting aside the termination of his employment. He alleged that such termination was wrongly made by the second appellant whose power had merely been confined to making a recommendation. Furthermore, the respondent alleged that "no witness was led in evidence" and that the second appellant acted as a witness and a judge at the same time.

[4] The High Court (Ebersohn J) upheld the respondent's contentions. He accordingly reviewed and set aside the termination of the respondent's employment with the

first appellant. Hence the present appeal.

[5] Now, Section 8(1) of the Industrial Relations Act No. 1 of 2000 provides as follows:-

"8. (1) 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 (Act), 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 course of employment or between an employer or employers' association and a trade union, or staff association or between an employees' association, a trade union, a staff association, a federation and a member thereof "

[6] In order to understand the true import of Section 8(1) of the Act, it is necessary to have regard to the history of industrial relations in this country. The forerunner to the current Act was the Industrial Relations Act No. 1 of 1996 which in turn followed the Industrial Relations Act No. 4 of 1980.

[7] Section 5(1) of the Industrial Relations Act No. 4 of 1980 provided as follows:-

"5(1) The Court (i.e. the Industrial Court) shall have exclusive jurisdiction in every matter properly brought before it under this Act, including jurisdiction:

(a) to hear and determine trade disputes and grievances".

This section was the subject of interpretation in **DONALD C. MILLS-ODOI v ELMOND COMPUTER SYSTEMS (PTY) LTD 1987 -1995fl) SLR 102(HC1** where Dunn AJ (as he then was) said the following: -

"Section 5(1) of the Act does not in my view expressly or by necessary implication oust the jurisdiction of this Court in all disputes arising out of employment. The section simply provides for a simpler and obviously less costly machinery for the settlement of disputes arising out of employment It is open to a party to a dispute to have such dispute resolved either under the common law or in terms of the disputes procedure provided for under the Act. Should a person elect to have a dispute settled in terms of the Act and to have the matter referred to the Industrial Court then only, does the matter fall within the exclusive jurisdiction of the Industrial Court."

[8] Inherent in Dunn AJ's decision was the notion that the

Industrial Court enjoyed concurrent jurisdiction with the High Court provided the matter was properly before the former court in the sense that the procedures laid down in the Act in question were followed.

[9] The Legislature responded by enacting the Industrial Relations Act No. 1 of 1996 which repealed the 1980 Act. Section 5(1) of the 1996 Act provided as follows :-

"5. (1) The Court shall have exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of any matter properly brought before it including an application, claim or complaint or infringement of any of the provisions of this Act, an employment Act, a workmen's compensation Act, or any other legislation which extends jurisdiction to the Court in respect of any matter which may arise at common law between an employer and employee in the course of employment or between an employer or employers' association and an industry union, between an employers' association, an industry union, an industry staff association, a federation and a member thereof"

[10] In **SIBONGILE NXUMALO AND OTHERS v ATTORNEY GENERAL AND OTHERS CIVIL APPEAL NOS. 25, 28, 29 AND 30 OF 1996** this Court said the

following:-

"In those matters which can be properly brought before the Industrial Court as set out in the Act, the appropriate forum is the latter court and to that extent the High Court's jurisdiction is ousted. It is, however, only in those matters that such ouster occurs."

[11] The Legislature reacted to SIBONGILE NXUMALO'S decision by enacting the current Act which repealed the 1996 Act. It is accordingly in this context that Section 8 of the Act as fully set out in paragraph [5] above must be construed. It will be noted for that matter that the section introduced one material change, namely, the words "any matter properly brought before it including" were omitted.

The effect of this change, read with the use of the word "exclusive" in the section makes it plain in my view that the intention of the Legislature in enacting Section 8(1) of the Act was to exclude the High Court's jurisdiction in matters provided for under the Act and thus to confer "exclusive" jurisdiction in such matters on the Industrial Court.

It is important to recognize that the purpose of the Legislature in establishing the Industrial Court was

clearly to create a specialist tribunal which enjoys expertise in industrial matters. In this regard I am respectfully attracted by the following remarks of Botha JA in **PAPER, PRINTING, WOOD AND ALLIED WORKERS' UNION v PIENAAR NO AND OTHERS 1993(4) SA 621(A)** at 637 A - B:-

"The existence of specialist courts points to a legislative policy which recognizes and gives effect to the desirability, in the interests of administration of justice, of creating such structures to the exclusion of the ordinary courts."

[13] I am further fortified in this view by Section 151(1) and (3), of the Constitution which provides in these terms:-

"151. (1) The High Court has-

- (a) unlimited original jurisdiction in civil and criminal matters as the High Court possesses at the date of commencement of this Constitution.*
- (b) such appellate jurisdiction as may be prescribed by or under this Constitution or any law for the time*

being in force in Swaziland.

- (c) *such reuisional jurisdiction as the High Court possesses at the date of commencement of this Constitution; and*
- (d) *such additional reuisional jurisdiction as may be prescribed by or under any law for the time being in force in Swaziland.*
- (e) ...
- (f) *Notwithstanding the provisions of subsection (1), the High Court*
 - (g) *has no original or appellate jurisdiction in any matter in which the Industrial Court has exclusive jurisdiction;*
 - (h) *has no original but has review and appellate jurisdiction in matters in which a Swazi Court or Court Martial has jurisdiction under any law for the time being in force."*

In my view Section 151(3) does two things in so far as is relevant to this case:-(1) In plain and unambiguous language, the section ousts the jurisdiction of the High

Court in any matter in which the Industrial Court has exclusive jurisdiction. To that extent, therefore, it stands to reason that there can be no question of the High Court and the Industrial Court enjoying concurrent jurisdiction.

(2) In terms of the section the inherent original

jurisdiction ordinarily vested in the High Court does not detract from the exclusive jurisdiction of the Industrial Court in dealing with matters provided for under the act.

This brings me to Section 19(5) of the Act. It reads as follows:-

"(5) A decision or order of the Court or arbitrator shall, at the request of any interested party, be subject to review by the High Court on grounds permissible at common law."

The word "Court" is defined in Section 2 of the Act to mean the Industrial Court.

In the context of the Legislative Scheme and object of the Act as fully set out above I am satisfied that the intention of the Legislature was to confer exclusive original jurisdiction on the Industrial Court in matters provided for under the Act. Put differently, all such matters must first go to the Industrial Court. It is only after the latter Court has made a decision or order in the matter that an aggrieved party may approach the High Court for review on common law grounds. It follows that by launching his review application in the High Court before the Industrial Court had made a decision or order in the matter, the respondent chose the wrong forum.

In reaching the above conclusion I have not overlooked the provisions of Section 152 of the Constitution. This section provides as follows: -

*"152. The High Court shall have and exercise review and supervisory jurisdiction over all subordinate courts and tribunals or any lower adjudicating authority, and may, in exercise of that jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its review or supervisory powers. **

It has not been suggested, nor could it be, that the first appellant is a Subordinate Court or a tribunal. Nor, still less, is it an adjudicating authority. On the contrary, it is common cause that it is a private body which is for that matter not constituted by statute.

[17] Weighing all of the foregoing considerations, I have come to the conclusion that the High Court has no jurisdiction in this matter and that only the Industrial Court has exclusive jurisdiction. As I pointed out in paragraph [15] above, and as I repeat now, it is only after the Industrial Court has made a decision or order in the matter that an aggrieved party may approach the High Court for review.

[18] Accordingly, the appeal is upheld with costs. The judgment of the court *a quo* is altered to read:-

"The application is dismissed with costs."

M.M. RAMODIBEDI
JUDGE OF APPEAL

I agree

M. J. BROWDE
ACTING JUDGE PRESIDENT

I agree

N.W. ZIETSMAN
JUDGE OF APPEAL

FOR APPELLANTS: MR. M. SIBANDZE

FOR RESPONDENT: MR. T. MLANGENI