

IN THE SUPREME COURT OF SWAZILAND

Civil Appeal Case No. 19/2007

In the matter between

SAMUEL MFANFIKILE MALAZA

Applicant

And

**SWAZILAND ROYAL INSURANCE
CORPORATION**

Respondent

Coram

RAMODIBEDI, JA

FOXCROFT, JA

EBRAHIM, JA

For the Applicant

ADVOCATE M. L M. MAZIYA

For the Respondent

MR. L. MNGOMEZULU

DELIVERED ON:

HEARD ON: 11th NOVEMBER 2008

20/11/2008

JUDGMENT

Ebrahim JA

The Applicant seeks an order that this court clarify its own judgment in so far as ground of appeal no. 2 is concerned being that "the court *a quo* erred in holding that the matter is *res judicata* as the matter was never dealt with on the merits".

The applicant also seeks costs of suit in the event this application is opposed and further and/or alternative relief.

The facts of this matter are that in June 2007 the applicant noted an appeal to this court against a judgment of Maphalala J in which the learned Judge held that an action heard by him had been dismissed and that the matter was *res judicata*. It was the contention of the applicant in his notice of appeal that the matter had not been dismissed and that the matter was not *res judicata* as it had not been dealt with on the merits.

The applicant now submits that when the matter was heard by this court it was dismissed on the first ground of appeal only being that there was sufficient evidence to prove that the action had been dismissed. He submits that the second ground of appeal was not dealt with.

He has now applied to this Court for it to clarify its earlier judgment so far as the second ground of appeal is concerned, namely, that the matter was not *res judicata* as it had not been dealt with on the merits.

I find myself in total agreement with the views of the respondent to this application that there is no legal basis for the present application.

The matter was dealt with by this court and judgment was delivered by the Honourable Chief Justice Banda, one of the panel of three judges of this Court who determined this matter.

I have read the judgment on Civil Appeal 19/2007 and find it to be clear, unequivocal, lucid and entirely devoid of any doubt as to the findings of the court. It clearly concluded that the matter had been dismissed and gave detailed reasons for reaching its conclusion.

Applicant's Counsel referred us to the case of **FIRESTONE SOUTH AFRICA (PTY) LTD V GENTICURO A.G. 1977 (4) (A) 298** at 307

where Trollip, JA said:

"The court may clarify its judgment or order, if, on a proper interpretation, the meaning thereof, remains obscure, ambiguous or otherwise uncertain, so as to give effect to its true intention, provided it does not thereby alter "the sense and substance " of the judgment or order.

In my view there is no basis whatsoever for concluding that the meaning of the judgment of this court in Civil Case 19 of 2007 was "obscure, ambiguous or otherwise uncertain" as alluded to above.

Once a decision was correctly made that the action had been dismissed there was no need for the court to have made any additional comments that the matter was *res judicata*. The matter ended there, and any subsequent attempt to revive the matter could inevitably and correctly be challenged on the basis that the matter ended when it was dismissed and therefore was *res judicata*.

The application is dismissed with costs.

A.lvl. EBRAHIM JUDGE
OF APPEAL

I agree

M.M.RAMOBJBEDI
JUDGE OF APPEAL


J.G. FOXCROFT
JUDGE OF APPEAL

I agree