IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Civil Appeal Case No. 26/2012

In the matter between

SWAZILAND ROYAL INSURANCE CORPORATION	**1st Appellant**
SWAZILAND RAILWAY	**2nd Appellant**

and

GEORGE EDWARD GREEN	**Respondent**

Neutral citation:	*Swaziland Royal Insurance Corporation v George Edward Green* (19/2012) [2012] SZSC 66 (30 November 2012)
Coram:	RAMODIBEDI CJ, MOORE JA and DR. TWUM JA
Heard:	**16 November 2012**
Delivered:	**30 November 2012**

Summary: Civil procedure; appeal against findings of court a quo; findings of court a quo not appealable – only orders made by the court are appealable. Appeal dismissed with costs to respondent.

DR TWUM J.A.

[1] The facts in this appeal are generally not in dispute.

[2] The respondent was employed by the 2nd appellant in 1997 as a Mechanic in terms of a written two (2) years fixed contract of employment. The 2nd appellant took out a policy of insurance with the 1st appellant for the benefit of its employees employed in managerial or supervisory positions. The respondent was employed in a managerial position. The insurance policy covered risks of bodily injury, occupational disease or death resulting therefrom arising out of and in the course of his said employment. The respondent sustained an injury during and in the course of his employment on 8th May 2005, which resulted in him being permanently, totally incapacitated. The contract of insurance referred to above had been renewed on the 1st April 2005 to terminate on 31st March 2006. The respondent therefore applied for payment of appropriate benefits under the policy but the claim was repudiated by the 1st appellant. The respondent thereafter sued the two appellants under High Court Civil Case No. 1069/11 claiming payment of damages to him under the contract of insurance. This suit is still pending and has not been heard.

[3] The respondent, fearing that the 1st appellant might interfere with the policy of insurance before the suit for damages was heard, applied for, ex parte, and on an urgent basis, an Anton Piller order for the search, attachment and preservation of the insurance policy to be used by the respondent in his claim for compensation against the appellants.

[4] In its ruling on the ex parte application the court a quo, made the following:-

(i) an order authorizing the Deputy Sheriff of the Hhohho District, accompanied by the respondent's attorney to search for, attach and seize the original Insurance Policy Document No. MBMMA 0014816.

(ii) an order authorizing the Deputy Sheriff to make a true copy of the said insurance policy and hand back the original to the 1st appellant and keep the said copy in safe custody pending trial in the action to be instituted by the respondent against the appellants.

(iii) The court a quo further issued a rule nisi against the appellants calling upon them to show cause why the said insurance policy should not be kept in the custody of the Deputy Sheriff pending trial in the contemplated proceedings against the appellants.

[5] In its answering affidavit, the 1st appellant raised two points in limine.

(a) that the High Court lacked jurisdiction to entertain the application in view of the fact that the contemplated claim for compensation arose from a contract of employment between the respondent and the 2nd appellant and that it was a claim which should be heard by the Industrial Court.

(b) that the 1st appellant had been improperly joined in the Anton Piller application since the respondent's claim for compensation was based on a contract of employment between him and the 2nd appellant.

[6] In its judgment dated 25th March 2012 the court a quo dismissed both of the in limine points raised by the appellants and also dismissed the application for the Anto Piller order itself and discharged the rule nisi on the basis that it did not meet all the requirements of an Anton Piller order.

The Appeal

[7] (i) On 27th April 2012, the appellants appealed against the whole of the judgment and the order dismissing the Anton Piller application. The following grounds of appeal were noted:-

1. The Learned Judge erred in not dismissing the application on the grounds that the dispute arose in respect of a matter under a

contract of employment between an employer and employee in the course of employment and therefore is a matter which only the Industrial Court has jurisdiction to entertain by virtue of the provisions of Section 8 of the Industrial Relations Act No. 1 of 2002.

2. The Learned Judge misdirected himself by finding that the Applicant's claim does not arise out of an employment contract between the 1st Appellant and the Respondent in as much as the evidence is common cause and the court a quo itself found that the policy arose from the employment relationship between the 2nd Appellant and the Respondent and covers the risk of death or bodily injury caused by an employment accident.

3. The Learned Judge erred by not finding that he did not have jurisdiction to hear the matter by reason of the fact that the Applicant's claim arose from an employment accident and is therefore a matter arising from employment relationship between an employer and employee in the course of employment which in terms of Section 8 of Industrial Relations Act is a matter within the exclusive jurisdiction of the Industrial Court.

4. The Learned Judge erred in not finding that there was no contractual nexus between the 1st Appellant and the Respondent because the contract was a group scheme between the 1st Appellant and the 2nd Appellant as employer.

5. The Learned Judge erred in not holding that there was no right of action under the policy that was exercisable by the Respondent against the 1st Appellant.

(ii) On 4th May 2012, the respondent through his attorney, Nkomondze, filed Notice to Oppose the Appeal.

(iii) In the first Appellant's Heads of Argument filed on 10th October 2012 it became clear that its appeal was against a finding of the court a quo to the effect that it had jurisdiction to entertain an urgent Anton Piller application. Another grievance appealed against was a finding of the court a quo that the 1st appellant was properly joined in the respondent's Anton Piller application.

(iv) During the hearing of the appellant's appeal, this court raised the issue whether or not a finding made by a court in the course of making an order is appealable. Counsel for the respondent submitted that the findings made by the court a quo were only incidental to the main dispute and did not have any definitive effect on the order made. Consequently, they are not appealable. Counsel for the appellant, however, argued that (1) the court a quo had no jurisdiction to entertain the application for the Anton Piller order. Further, that "the insured" (ie the first appellant) was wrongly joined in that application. He submitted at paragraph 8 of the 1st appellant's Heads of Argument filed on 18th October, 2012 that the findings of

the High Court that are the subject matter of this appeal have all the hallmarks of appealability for the following reasons:-

(a) The finding that the High Court has jurisdiction is definitive of the rights of the parties in relation to the damages claim that has been launched by the respondent.

(b) The findings under appeal are final in effect and not susceptible to alteration by the High Court.

Counsel submitted therefore, that these were errors of law relating to those findings which could only be remedied by an appeal. In paragraph 26 thereof he concluded his submission thus:

"In the final analysis, it is submitted that the appeal should be upheld with costs."

(v) In my opinion, the submissions of counsel for the first appellant are erroneous. The matter was succinctly put by this court in the case of Gugu Prudence Hlatshwayo (appellant) and The Attorney-General – (Respondent) (2006) SZSC 8 (Case No 2/2006). See also Administrator, Cape and Another v Ntshwagela and others 1990 (1) S.A. (A) at 715 C-D where the Court held that an appeal does not lie against the findings or reasons for judgment but only against the substantive order made by a court.

The appeal therefore fails and is dismissed with costs.

DR. SETH TWUM
JUSTICE OF APPEAL

I agree.

M.M. RAMODIBEDI
CHIEF JUSTICE

I also agree.

S.A. MOORE
JUSTICE OF APPEAL

COUNSEL:

For 1st Appellant:	**Mr. N. Mthethwa**
For 2nd Appellant:	**Mr. B. Ngcamphalala**
For Respondent:	**Mr. M. Nkomondze**