



**IN THE SUPREME COURT OF APPEAL OF SWAZILAND
JUDGMENT**

Appeal Case No.81/2012

In the matter between:-

KENNETH B. NGCAMPHALALA

Appellant

and

**SWAZI LAND DEVELOPMENT &
SAVINGS BANK (PTY) LTD**

1st Respondent

**THE PRESIDENT JUDGE OF THE
INDUSTRIAL COURT**

2nd Respondent

Neutral citation: *Kenneth B. Ngcamphalala v Swaziland Development
& Savings Bank and Another (81/2012) [2013]
SZSC 40 (31 May 2013)*

Coram: **A. M. EBRAHIM JA, P. LEVINSOHN JA, and
B. J. ODOKI JA**

Heard: **23 May 2013**

Delivered: **31 May 2013**

Summary: Labour Law – Decision of Industrial Court reviewed by High Court and review granted – Appeal to the court dismissed.

JUDGMENT

ODOKI J.A.

- [1] The appellant appeals against the judgment of the High Court (Mabuza J) which reviewed the decision of the Industrial Court and allowed the review.
- [2] The brief facts of the case are that the appellant was an employee of the 1st respondent. He was employed as a Personal Assistant to the Managing Director of the 1st respondent in January 1997, at a monthly salary of E14 583.33, together with other benefits.
- [3] During March 1998, the 1st respondent underwent a change of management. Due to disagreements with the new management, the appellant proposed to the 1st respondent in a letter dated 11 January 2001 that instead of reporting for work each day he remains at home with full pay plus benefits. In the same letter to the 1st respondent the

appellant proposed that he takes an exit package and he set out the proposed package which was rejected by the 1st respondent.

- [4] In response to the 1st respondent's letter of 22nd January 2001 the appellant sent to the 1st respondent a draft memorandum in which he wanted the 1st respondent to bind itself that the appellant would remain at home with full pay plus benefits until the matter was resolved. The 1st respondent declined to sign the agreement and instead wrote to the appellant a memorandum dated 24 January 2001 in which it was stated as follows,

“My letter dated 22nd January 2001 addressed to you and which was formally communicated and discussed with you today is sufficient whereby in paragraph “3” I indicated to you that the Bank accepts your suggestion that you remain at home forthwith on full pay plus benefits whilst this matter is being finalized. That in my view, fully covers the security you may be after.”

- [5] On 9th March 2001, the 1st respondent wrote to the appellant terminating his services by reason of redundancy as his post was abolished. The terms of the exit package had not been agreed as the negotiations failed. The 1st respondent in that letter set out two options with regard to terminal benefits from which the appellant could select but the appellant rejected them.

- [6] The 1st respondent and the appellant had a contract whose unfair termination was successfully challenged by the appellant in the Industrial Court. The appellant was awarded maximum compensation calculated at 12 months for unfair dismissal. The award was based only on monthly salary and no compensation in respect of benefits was awarded as it was not part of the applicant's cause of action at that time.
- [7] The appellant subsequently lodged an application under Case No. 186/2010 in the court **a quo**. The 1st respondent successfully opposed the application and the 2nd respondent who was the sitting Judge dismissed the application with costs on 2nd February 2011. The appellant then filed the application for review of that decision in the High Court.
- [8] The court **a quo** which granted the application and made the following order,

“I therefore find for the applicant and the decision of the 2nd respondent is hereby set aside and its place I order that the applicant's terminal benefits comprising of severance pay, notice pay and additional notice pay as provided by law be fully paid with costs. In the event that the 1st respondent did pay the applicant his terminal benefits then this order should be ignored and the matter remains dismissed as ordered by the court a quo with no order as to costs.”

- [9] It is against the judgment of the court **a quo** that the appellant has appealed on several grounds.
- [10] From his notice of appeal and the heads of argument, it is clear that the appellant is not satisfied with the level of compensation in terms of benefits that he was granted by the court **a quo** or paid by the 1st respondent. He bases his argument on the belief that the agreement for him to stay at home entitled him to full salary plus benefits until an exit package was agreed or a mutually acceptable finalization of the matter was reached, failing which payment was to be made until his retirement age.
- [11] The appellant submits that it is clear from the language used in the letter that the intention was for the appellant to be paid his salary plus new benefits up to the time of agreement on exit package, however long it took.
- [12] The 1st respondent maintains that the appellants' claim to be paid a salary and full benefit into perpetuity when he himself by his conduct accepted that his services had been terminated and acted upon such termination is spurious and the appellant's interpretation of the agreement that he remains at home indefinitely on full benefits is as absurd.

[13] I entirely agree with the submissions of the 1st respondent that the appellant's claim is spurious and borders on an abuse of the Court process. The appellant has had his claim considered on three occasions and did succeed in the court **a quo**. In my view, the appellant has no more claims against the 1st respondent, and he is not entitled to reopen matters which are already decided in the name of seeking for more compensation or benefits for unfair dismissal. There must be an end to litigation.

[14] Consequently, I find no merit in this appeal and it is dismissed with costs.

B. J. ODOKI
JUSTICE OF APPEAL

I agree:

A. E. EBRAHIM
JUSTICE OF APPEAL

I agree:

P. LEVINSOHN
JUSTICE OF APPEAL

For the Appellant: Mr. S. C. Dlamini

For the Respondent: Mr. M. M. Sibandze