



IN THE SUPREME COURT OF ESWATINI
JUDGMENT

HELD AT MBABANE

Case No.: 44/2021

In the matter between:

MATSAPHA TOWN BOARD

1st Applicant

ESWATINI ROYAL INSURANCE CORPORATION

2nd Applicant

and

COMFORT SIBUSISO MDLULI

Respondent

Neutral Citation: *Matsapha Town Board and Another vs Comfort Sibusiso Mdluli*
(44/2021) [2022] SZSC 28 (13/07/2022)

Coram: **M.J. MANZINI AJA (sitting as a single Judge).**

Date Heard: 01 June, 2022.

Date Delivered: 13 July, 2022.

SUMMARY : *Civil procedure – Application for leave to appeal against Order of the High Court dismissing application for absolution from the instance – Applicants alleging that Respondent debarred from claiming damages for injuries in respect of which he had claimed for and received compensation under the Workmen's Compensation Act – High Court failing to give reasons as to why claim is not debarred under the Workmen's Compensation Act – Requirements for granting leave to appeal discussed – Held that Applicants satisfied requirements – Application for leave to appeal granted.*

JUDGMENT

M.J. MANZINI, AJA:

[1] Before me is an application for leave to appeal an Order of the High Court issued by Justice M. Dlamini J dismissing an application for absolution from the instance brought at the close of the Plaintiff's (the Respondent in these proceedings) case in a trial before her.

[2] The Learned Judge did not furnish any reasons for dismissing the application, opting to do so in the main Judgment. This is a matter where written reasons

for the dismissal of the application ought to have been furnished. I wish to refer to my words in Teaching Service Commission and Another V. Timothy Tsabedze (61/2019) [2021] SZSC 48 (25/02/2022) where, in writing for the majority, I stated that it is highly undesirable, if not downright a breach of the litigant's rights, that a Judicial Officer should fail to supply reasons for a judicial decision. Written reasons enable a litigant to properly assess whether a judgment or order is correct, and if dissatisfied, to be able to articulate grounds of appeal, if he or she so wishes to pursue an appeal.

[3] Reverting to the facts. It appears from the affidavit filed in support of the application for leave to appeal that the Applicant is Matsapha Town Board, a statutory body established in terms of the Urban Government Act, 1969. The 2nd Applicant is Eswatini Royal Insurance Corporation, an insurance company. The Respondent is the beneficiary of the impugned Order dismissing the application for absolution from the instance.

[4] It further appears from the affidavit that the Respondent instituted a damages claim in the High Court against the Applicants for injuries sustained in the course of his employment. The damages claimed were in respect of medical

expenses (E2,500); estimated future medical expenses (E50,000); loss of earnings (10,000); loss of future earnings (2, 160,000); and general damages (E250,000) a total of E2,472,500.00.

[5] The Applicants pleaded, in the main, that the Respondent had already successfully claimed for compensation in terms of the Workmen's Compensation Act 7/1983, and had received a sum of E439,000.00 (Four Hundred and Thirty Nine Thousand Emalangeni). The Applicants contend that at the trial the Respondent conceded or confirmed that he had pursued and received compensation, for the same injury, under the Workmen's Compensation Act.

[6] The Applicants contend that at the close of the Respondent's case they specifically raised the provisions of Section 23 of the Workmen's Compensation Act and applied for absolution from the instance on the basis that the Respondent's claim for damages was debarred by the aforesaid provision. That is to say he was debarred by the aforesaid Act from claiming twice for the same injuries.

[8] As earlier alluded to the Learned Judge *a quo* has not furnished any reasons for the dismissal of the application for absolution from the instance, notwithstanding requests by the Applicants.

[9] The requirements to be satisfied in granting leave to appeal are now well settled, and are as follows:

- (a) There must be reasonable prospects of success;
- (b) The amount, if any, must not be trifling;
- (c) The matter must be of substantial importance to one or both of the parties; and
- (d) A practical effect or result can be achieved by the appeal.

See: **Johan Jacob Rudolph and Another v. Kailyn Estates (Pty) Limited and Two Others (62/2019) [2020] SZSC 45 (16/12/2020) and Teaching Service Commission and Another v. Timothy Tsabedze (61/2019) [2021] SZSC 48 (25/02/2022).**

[10] The main thrust of the Applicant's argument is that on a plain reading Section 23 of the Workmen's Compensation Act, the Respondent's claim for damages

cannot be sustained as he has already received compensation, Section 23 provides that:

“23. If the injury in respect of which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof:

(a) The workmen may take proceedings both against such person to recover damages and against any person liable to pay compensation under this Act for such compensation but shall not be entitled to recover both damages and compensation; and

(b) If the workman has recovered compensation under this Act, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 22 relating to liability in the case of workmen employed by contractors, shall be entitled to be indemnified as regards the amount of compensation, including costs, by the person so liable to pay such damages, and any question as to the right and amount of any such indemnity shall, in default of agreement, be settled by civil suit or,

by consent of the parties, by arbitration under the Arbitration Act 1904.” (own underlining for emphasis)

[11] I am satisfied that the Applicants have established reasonable prospects of success in their appeal. The interpretation of Section 23 of the Workmen’s Compensation Act contended for by the Applicants, without deciding the issue, appears to be correct. On the basis of their interpretation an appellate could reasonably arrive at a conclusion different from that of the Learned Judge *a quo*.

[12] I am equally satisfied that the amount in dispute is not trifling and that the matter is of substantial importance to the parties. The appeal, if successful, will bring to an end the litigation between the parties. The result, if in favour of the Applicants, will curtail the proceedings and save the litigants from unnecessary costs.

[13] In the result, I hereby grant leave to appeal, with no order as to costs.

ORDER:

1. Leave to appeal the Order of the High Court dated 6th August, 2021 dismissing the Applicant's application for absolution from the instance is hereby granted.
2. No order as to costs.



M.J. MANZINI

ACTING JUSTICE OF APPEAL

For the Applicants:

MAGAGULA & HLOPHE ATTORNEYS

For the Respondent:

NZIMA AND ASSOCIATES