

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 118/99

In the matter between:

PAULOS TSABEDZE

APPLICANT

And

GUARD ALERT SECURITY

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. B. DLAMINI:

FOR APPLICANT

MR. HENWOOD:

FOR RESPONDENT

RULING ON POINT IN LIMINE

8/12/00

The applicant has brought this application in terms of Section 58 (2) of the Industrial Relations Act 1996 - seeking an order for the payment of his terminal benefits and compensation for unfair dismissal.

The respondent has raised an objection in limine in the following terms:-

That this court is not seized with jurisdiction to hear this matter in that the applicant has failed to annex to its application a certificate of unresolved dispute in terms of the Industrial Relations Act No. 1/1996.

The respondent avers that for this reason alone, thus court is unable to hear and determine this application.

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In reply applicant's representative stated that they have complied with Section 57 and 58 of the Industrial Relations Act.

There is filed of record a document (Annexure 'F') titled Department of Labour. We are not told what this document is. However, it is clear that it is not a certificate of unresolved dispute. It is also not a report in terms of Section 41 of the Employment Act. It however, does look like an incomplete report in terms of Section 41 of the Employment Act.

In his application applicant states that the application is in terms of Section 58 (2) of the Industrial Relations Act 1996. This therefore means that the application should be accompanied by a certificate of unresolved dispute.

The procedures under Section 57 and 58 of the Industrial Relations Act 1996 and Section 41 of the Employment Act should not be mixed. If a litigant decides to proceed under Section 41 of the Employment Act, he must go all the way. It was the intention of the legislature that those two different procedures

under the two separate statutes should remain separate.

Parker J. in *Eric Khumalo vs Usuthu Pulp Company Ltd* had this to say regarding these two separate procedures;

"So when the legislature enacted the relevant provisions in Section 57 and 58 of the Industrial Relations Act, it must be assumed that it knew of the relevant provisions of the Employment Act, i.e. in Section 41. Yet not only did it not repeal those provisions but indeed it did confirm its clear intentions to dichotomise the two procedures by prescribing the content of a report and the giving of notice of a dispute under the Industrial Relations Act Section 58. But there is no such prescription under Section 41 of the Act."

It is therefore clear that applicant was supposed to follow the route of Section 57 and 58 of the industrial Relations Act by annexing a certificate of unresolved dispute.

For the foregoing it is the conclusion of this court that it cannot take cognisance of this matter. The point in limine succeeds the application is therefore dismissed. No order as to costs.

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Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)