IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 161/2000

In the matter between:

DUMISA LUKHELE APPLICANT

And

SAVELLS FURNISHERS (PTY) LTD RESPONDENT

CORAM:

NDERI NDUMA: PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

FOR APPLICANT: P.R.DUNSEITH

FOR RESPONDENT: M.SIBANDZE

RULING ON POINT IN LIMINE

12/02/02

The Respondent has objected to an application brought in terms of Section 65 of the Industrial Relations Act, 1996 for the determination of an unresolved dispute in the following terms:

That the dispute was conciliated upon on the 7th September 1999 and was settled and an agreement was voluntarily entered into in full and final settlement of the clai?ns made by the applicant in consideration of payment of E13,673.00.

The deed of settlement is annexed to the Respondent's reply entered into in terms of Section 61 of the Industrial Relations Act, 1996.

The issues in dispute were listed in the Memorandum of Agreement seriatim as follows:

1.	1 month notice	E5500.00
2.	Additional notice	E1695.00
3.	Sales incentive 1999	E 750.00
4.	Severance allowance 20 days	E4230.00
5.	Maximum compensation	
	Sales Incentive arrears	E1500.00

The document then proceeded as follows:

"The abovementioned parties have now settled their dispute(s) in the following manner:

That he be paid a sum of E13,673.00 for the following:

(a)	1 month notice	E 5,500.00
(b)	Additional notice 8 days	E 1,693.00
©	Sales incentive 1999	E 750.00
(d)	Severance allowance 20 days	E 4,230.00
(e)	Sales incentive arrears (1997)	E 1,500.00
	TOTAL	E13.672.00

The Agreement states that it was read over and explained to the parties in both English and Siswati in the presence of some witnesses.

It was then signed for the employee and for the employer in the presence of witnesses.

The Commissioner of Labour was to forward the Agreement to the Industrial Court for registration and award in terms of Section 64 (4) of the 1996 Act.

The Agreement itself does not purport to settle all the issues listed therein to be in dispute neither does it state that it is in full and final settlement of all issues listed to have been in dispute.

It is noteworthy that all the issues listed as those in dispute were settled and specifically itemized in paragraph 3 of the Agreement other than the claim for maximum compensation.

The Respondent contends that it was the intention of the parties to settle even the issue of maximum compensation which contention is resisted by the Applicant hence the application for determination of that outstanding issue.

The Respondent did not lead any oral evidence in support of its allegation, that indeed the issue was settled in the absence of any express evidence on the document itself.

Furthermore, the office of the Labour Commissioner before whom the conciliation was conducted and the agreement reduced into writing issued a certificate of unresolved dispute in terms of Section 65 (1) of the Act, in respect of the issue of maximum compensation for unfair dismissal.

A certificate of unresolved dispute presents prima facie evidence of all the issues contained therein unless same are rebutted by substantive proof.

It is trite that if a document is conclusive as to the terms of the transaction, evidence of different or additional terms will be excluded because the rules of construction require the meaning of a document to be decided without reference to certain extrinsic facts, evidence of those facts will also be irrelevant. This is a matter of substantive law rather than a rule of evidence, though 'parol evidence rule' has been applied on the assumption that it forms a part of the English law of evidence. See the cases of Cassiem v Standard Bank of SA Ltd 1 930 AD 366 at 368. Von Zieger v Superior Furniture Manufactures (Pty) Ltd 1962 (3) SA 399 (T) at 403 and Schroeder v Vakansieburo (Edms) BPK 1970 (3) SA 240 (T).

In the present case, the terms of the agreement are required by the Industrial Relations Act 1996, and the subsequent Act No. 1 of 2000 to be in writing as opposed to an agreement which the parties have agreed to reduce to writing.

The execution of the agreement deprives all previous statements of their legal effect. The document itself is conclusive as to the terms of the transaction which it was intended to record, if it speaks with sufficient clarity.

The court finds that the document speaks with sufficient clarity that, indeed, all the listed issues in dispute, save for the issue of maximum compensation for unfair dismissal were resolved.

The court was referred to the Case of David Jele ana Usuthu Pulp Company. Industrial Court of Swaziland Case No. 40/97.

Therein Justice C. Parker as he then was in interpreting a memorandum of agreement entered into in terms of Section 61 of the Industrial Relations Act 1996 decided not to allow any extrinsic evidence stating that the agreement was the only embodiment of the agreement between the parties.

The Agreement in that case was worded differently from the one in casu in that the only issue in dispute was listed as reinstatement and the Applicant was paid in settlement of the dispute. There being no other issue in dispute conciliated upon, non could subsequently have been entertained.

That case is clearly distinguishable therefore from the present case where an issue listed to have been in dispute was specifically excluded from the list of issues that were said to have been resolved.

I agree with the contention of the judge therein that there is no magic in the phrase " in full and final settlement". However all the issues in dispute, if have been settled the parties must state so clearly in unequivocal and non ambiguous language.

Accordingly, the point in limine must fail.

The Respondent is allowed to file replying papers on the merits within fourteen days from the date of the ruling.

There will be no order as to costs.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT