IN THE INDUSTRIAL COURT OF SWAZILAND
HELD AT MBABANE

CASE NO. 211/06

In the matter between:

MDUDUZI NHLEKO **APPLICANT**

and

SWAZI OXYGEN (PTY) LTD **RESPONDENT**

CORAM:

NKOSINATHI NKONYANE: ACTING JUDGE

GILBERT NDZINISA: MEMBER

DAN MANGO: MEMBER

FOR APPLICANT: S. MADZINANE

FOR RESPONDENT: S.M. SIMELANE

RULING ON POINT IN LIMINE 03.07.06

[1] The applicant is a former employee of the respondent. He was employed by the respondent on the 10th January 2001 as a Cylinder Filler/handler.

[2] He was dismissed by the respondent on the 5 September 2005 after absenting himself for two days. He reported a dispute with the Conciliation Mediation and Arbitration Commission (CMAC) on the 2nd November 2005. He claimed that he had been unfairly dismissed by the respondent.

[3] The dispute was amicably resolved at CMAC and a Memorandum of Agreement was signed by the parties on the 16th December 2005.

[4] The applicant was paid a sum of E5,400:00 as a final settlement of the dispute. The parties also agreed that no further claims would be made.

[5] The applicant however reported another dispute against the respondent. That dispute is the subject of the application currently serving before the court. The nature of the second dispute is unfair labour practice. In the report of dispute (CMAC Form 1), the applicant stated under paragraph 5.2 that the dispute first arose on the 3rd January 2005.

[6] The essence of the second dispute was that on the 3rd January 2005 the respondent changed the applicant's terms of employment. On the 3rd January 2006 the applicant began to work for the respondent on a contract basis. The contract was for one year from January 2005 up to 31st December 2005.

[7] The applicant claims that the changes in the terms of employment amounted to demotion and constituted unfair labour practice.

[8] In its replies the respondent raised a point in *limine* and argued that the applicant's application was incompetent and misconceived as the parties had already settled the dispute on the 16th December 2005. The respondent argued that in terms of the Memorandum of Agreement the parties agreed that no further claims would arise between the parties.

[9] On behalf of the applicant it was argued that the two disputes were different. It was argued that the dispute that was settled by the parties related to unfair dismissal when the applicant was being employed by the respondent on a contract basis, whereas the present application is based on unfair labour practice.

[10] The applicant's argument will be dismissed for the following reasons;

Firstly, the applicant himself told CMAC in the report of dispute that he was employed by the respondent from the 10th January 2001 until the 5th September 2005. He did not mention in his report that he was first employed by the respondent on the 10th January 2001 until the 3rd January 2005 when he was employed on a one year contract basis until the 31st December 2005. It is not clear therefore why he now wants the court to view his employment relationship with the respondent as having two phases, one when he was a permanent employee and one when he was employed on a one year contract, when that is not what he reported at CMAC. The applicant did not report a dispute of unfair dismissal resulting from breach of the contract of employment entered into by the parties on the 3rd January 2005.

[11] Secondly, the first dispute related to events that took place in September 2005, whereas the present dispute relates to events that took place in January 2005. It means therefore that when the September 2005 dispute was conciliated, the applicant was aware that there was another potential dispute between the parties. It is therefore not clear to the court why did the applicant sign the Memorandum of Agreement on the 16th December 2005 to the effect that no further claims would be made in the employment relationship between the parties.

[13] There was no argument that the applicant was tricked or that he signed the Memorandum of Agreement under duress.

[14] The applicant having agreed that there was going to be no further claims arising from the parties' employment relationship, the court will have to uphold the point *in limine.*

[15] The point *in limine* is accordingly upheld and the application is dismissed.

No order for costs is made.

The members agree.

NKOSINATHI NKONYANE AJ.

INDUSTRIAL COURT