

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 440/2007

In the matter between:

JOSEPH VELAMUVA DLAMINI

1st Applicant

THEMBA NYAMANE

2nd Applicant

and

THE MINISTRY OF HEALTH AND
SOCIAL WELFARE

1st Respondent

THE ATTORNEY GENERAL

2nd Respondent

CORAM:

P. R. DUNSEITH:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR APPLICANTS:

J. MAVUSO

FOR RESPONDENTS:

N. MATHUNJWA

J U D G E M E N T - 19/10/2007

1. The Applicants have applied to the Industrial Court on notice of motion supported by affidavits, claiming payment of their arrear salaries for the period March - August 2007. Each Applicant claims payment of the sum of E42,000-00.

2. In their founding affidavits, the Applicants allege that they were each employed by the Ministry of Health & Social Welfare in the Swaziland Government for the period 4th January 2007 to 4th January 2008 on terms recorded in written contracts of employment.

3. In terms of their contracts, the Applicants were employed as regional contraceptive

logistics management officers, earning an annual remuneration of E84.000-00, payable monthly on or before the 25th day of each month.

4. The Applicants allege that they duly commenced their employment and discharged their employment obligations in terms of their respective contracts of employment. Nevertheless the Government failed or neglected to pay their salaries for the period March - August 2007. The arrears due and owing to each Applicant amount to E42.000-00.

5. The Applicants allege that they have not breached their employment contracts and there is no lawful reason for the non-payment of their salaries over a period of six months.

6. The Applicants attach copies of the employment contracts to their affidavits. The contracts contain the terms alleged by the Applicants. Each contract is signed by the Principal Secretary in the Ministry of Health and Social Welfare on behalf of the Government as employer. On the face of the contracts, the Government was liable to pay the sum of E42.000.00 to each Applicant in respect of agreed remuneration for services rendered during the period March - August 2007.

7. The Respondents appeared in court through Crown Counsel to oppose the application. The Respondents rely solely upon a point of law, and they have not filed any answering affidavits placing in issue the factual averments made by the Applicants.

8. The point of law raised by the Respondents may be simply stated as follows:

The court may not take cognizance of the Applicant's claim because it has not been reported or dealt with in terms of the procedures provided in Part V111 of the Industrial Relations Act 2000 (as amended).

9. Part V111 of the Act deals inter alia with the procedure for reporting a dispute to the Conciliation, Mediation and Arbitration Commission for conciliation, the resolution of disputes through conciliation, and the referral of unresolved disputes to the court for determination.

10. Rule 3 (2) of the Industrial Court Rules, 1984 provides:

"The court may not take cognizance of any dispute which has not been reported or dealt with in accordance with Part [V111] of the [Industrial Relations] Act.

11. It is common cause that the Applicants have not reported a dispute to the Commission, nor have their present claims been the subject of conciliation before the Commission, nor has the Commission issued a certificate of unresolved dispute. Furthermore, the Applicants have not requested the court to waive compliance with Rule 3 (2) on grounds of urgency or for some other sufficient reason.

12. At first blush, the Respondent's legal point appears to have some merit. However the Applicants' counsel counters the legal point by submitting that there is no dispute with regard to the Applicants' claims, and there is accordingly no legal necessity to submit the claims to conciliation before approaching the court.

In terms of Rule 3 (2), the court may not take cognizance of any dispute which has not been reported to or dealt with by the Commission, but the rule does not preclude the court from enforcing payment of debt which is wholly undisputed.

13. The word "dispute" in its ordinary meaning connotes controversy or disagreement - see The Concise Oxford Dictionary (9 Ed). The interpretation section of the Industrial Relations Act 2000 (as amended) provides that " *'dispute' includes a grievance, a grievance over a practice, and means any dispute over the -*

(a) entitlement of any person or group of persons to any benefit under an existing collective agreement, joint negotiation Council agreements or Works Council agreement;

(b) existence or non-existence of a collective agreement or Works Council agreement and Joint Negotiation Council agreement;

© disciplinary action, dismissal, employment, suspension from employment or re-engagement or reinstatement of any person or group of persons;

(d) recognition or non-recognition of an organization seeking to represent employees in the determination of their terms and conditions of employment;

(e) application or the interpretation of any law relating to employment; or

(f) terms and conditions of employment of any employee or the physical

conditions under which such employee may be required to work."

14. The Respondents neither deny nor dispute their liability to pay the arrear salaries accrued to the Applicants in terms of their contracts of employment. There is no dispute as to the Applicants' terms and conditions of employment, their entitlement to be paid their monthly remuneration for the period March - August 2007, or the amount claimed by each Applicant. There is no controversy or dispute, whether one applies the dictionary meaning of the word or the specialized meaning prescribed by the Act, as to the entitlement of the Applicants to be paid their arrear salaries.

15. On the papers, the Respondents are failing or neglecting to pay an undisputed debt. No purpose can be served by insisting that such a debt should first be subjected to conciliation procedures, when all that is required is payment. Rule 3 (2) of the Industrial Court Rules was never intended to prevent a party from coming directly to court to enforce payment of an undisputed debt.

16. We do however sound a warning in case the above statement be construed as an invitation to bypass the dispute resolution procedures prescribed by Chapter V111 of the Act merely because an Applicant believes his/her claim to be indisputable.

If there is a bona fide and genuine dispute, the provisions of Rule 3 (2) must apply

17. The point in limine is dismissed. An order is granted in terms of prayers (a) and (b) of the notice of application. There is no order as to costs.

The members agree.

PETER R. DUNSETH
PRESIDENT OF THE INDUSTRIAL COURT