



**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

Case No 211/2022

In the matter between:

**IRENE NXUMALO**

Applicant

And

**ESWATINI ROYAL INSURANCE  
CORPORATION**

Respondent

**In re:**

**IRENE NXUMALO**

Applicant

And

**ESWATINI ROYAL INSURANCE  
CORPORATION**

Respondent

**Neutral citation:** Irene Nxumalo v Eswatini Royal Insurance & Another [211/22)  
[2022] SZIC 23 (05 April, 2022)

**Coram:**

**NGCAMPHALALA AJ**

*(Sitting with Mr.MP. Dlamini and Mr. E.L.B. Dlamini,  
Nominated Members of the Court)*

DATE HEARD: 20<sup>th</sup> March,

2023 DATE DELIVERED: 5<sup>th</sup> April,

2023

***SUMMARY: Application for the interpretation of a judgment issued by the Court on the 21,, September, 2022-variation of terms of suspension by employer- application opposed- point in limine raised tis pendens.***

***Held - Application granted-no order to costs.***

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## **JUDGMENT**

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[1] The Applicant is Irene Nxumalo an adult Liswati female ofManzana area in the Mbabane, Hhohho Region, but currently resides at Ka-Shali area within the same Region.

[2] The Respondent is Eswatini Royal Insurance Corporation, an entity with the capacity to sue and to be sued in its own name, established as such by laws of the Kingdom ofEswatini carrying its business at Insika House, Somhlolo Road, Mbabane, District ofHhohho.

### **[3] BRIEF BACKGROUND**

The matter has a brief history before this Court, and finds its way before this Court again, following the judgment of this Court under the same case number, wherein on the 27<sup>th</sup> September, 2022, the Court entered a judgment in favour of the Applicant. The order varied the Applicant's suspension

from

being one on half pay and reverted it to full pay, on or before the next pay roll. The Respondent complied with the judgment, and restored the Applicant's suspension to full pay on the next pay roll, which was at the end of October, 2022. However, the Respondent did not pay the Applicant her salary for the month of July, August and September, 2022. This has led to the filing of the present application.

[4] The Applicant has now approached the Court, seeking an order in the following terms:

4.1 Declaring that the Applicant is entitled to payment of the sum of E41,840.25 (Forty-One Thousand Eight Hundred and Forty Emalangeneni Twenty-Five Cents).

4.2 Directing the Respondent to pay Applicant the aforesaid sum of E41,840.25 (Forty-One Thousand Eight Hundred and Forty Emalangeneni Twenty-Five Cents) on or before the next pay roll.

4.3 Granting costs of suit.

4.4 Granting further and/or alternative relief.

[5] The Applicant's application is opposed by the 1<sup>st</sup> Respondent and an answering affidavit was duly filed and deposed thereto by Ms. Carol Muir, 1<sup>st</sup> Respondent's Human Resources Manager. The Applicant on the 22<sup>nd</sup>

February, 2023 thereafter filed her replying affidavit, and her heads of arguments, on the 3<sup>rd</sup> March, 2023, the Respondent did not file any heads of arguments and asked the Court to rely on its pleading which were comprehensive. The matter was then set down for arguments for the 20<sup>th</sup> March, 2023, on which date the matter was argued and judgment reserved.

### **ANALYSIS OF FACTS AND APPLICABLE LAW**

- [6] Through its Answering Affidavit the 1<sup>st</sup> Respondent, raised a point *in limine*, *Ad Lis Pendens*.
- [7] At the hearing of the matter, the Respondent advised that it was abandoning its point *in limine*, and that the matter be heard on the merits. The Applicant was amenable to this position and the matter was accordingly heard only on the merits. The parties further agreed that the crisp issue for determination by the Court, was the interpretation of the Courts judgment issued on the 27<sup>th</sup> September, 2022.
- [8] It was the Applicant's submission that the legal issues before the Court for determination was the interpretation of the judgment of this Court issued on the 27<sup>th</sup> September, 2022. The gist of the judgment was for the Respondent to reverse the Applicant's suspension from one on half pay, to suspension on full pay. The Applicant referred the Court to the case of **BEAUTY BUILD CONSTRUCTION (PTY) LTD V MUZI P. SIMELANE ATTORNEYS AND 2 OTHERS (68/2015) [2019] SZSC**, wherein His Lordship Manzini cited the case of **FIRESTONE SOUTH AFRICA (PTY) LTD V GENTICURO A.G 1977(4) SA 298**



(A.D), wherein the principles applicable to interpretation of judgment, and Court orders was laid down.

- [9] It was the Applicant's submission that the judgment of the Court issued was silent on the backpay of salaries withheld from the months of July, August and September, 2022. However, the Comi did pronounce that the variation of the Applicant's salary was not in compliance with the law, nor the Respondent's Disciplinary Code, and determined that the suspension on half pay was unlawful. It was the Applicant's argument that upon the pronouncement by the Court on the matter the Respondent was required to immediately pay the Applicant the shortfall of her salary, including the months of July, August and September, 2022.
- [10] It was her further argument that in its Answering Affidavit on its own accord, the Respondent agreed that, *"Applicant if it succeeds at CMAC or in due course in this Court can be easily refunded the shorifall on the salary."* It was the Applicant's submission that the Respondent accordingly should pay the Applicant the shortfall as per its promise, more particularly since it did not approach the Court for a stay of the judgment. It was therefore the Applicant's prayer that the application be granted.
- [11] The Applicant further submitted that it was applying for the cost order because of the dilatory conduct of the Respondent, of persisting that the matter proceed in Court, is unnecessarily clogging the Comi roll, and in the process putting the Applicant out of pocket.

[12] In rebuttal, the Respondent very briefly in its arguments dealt with the merits of the case, as it had abandoned the point *in limine*. The Respondent confirmed that the issue in contention is the interpretation of the judgment of the Honourable Court of the 27<sup>th</sup> September, 2022. It was its submission that upon receipt of the Court Order, the Respondent proceeded to pay the Applicant her full salary, effective 20<sup>th</sup> October, 2022, which was the next pay date.

[13] It was the Respondent's averment that it did not pay the Applicant the shortfall of the July, August and September, 2022 salary, because from its reading of the judgment, the effective date for the restoration of Applicant's suspension on full pay was with effect from the next pay roll being the 20<sup>th</sup> October, 2022. It was the Respondent's submission that it would leave the issue of the interpretation of the judgment in the capable hands of the Court, and the order granted therein. It was however opposed to the costs order as applied for by the Applicant, as it averred that an employer/employee relationship still existed between the parties and that a costs order would strain the relationship even further. Therefore, it was its prayer that no cost order be awarded in the Applicant's favour.

[14] In the case of **SAMKELISIWE DLAMINI V SIKHUMBUZO DLAMINI HIGH COURT CASE NO. 32/2019** the Honourable Judge Hlophe stated the following;

*"The position on the interpretation of judgments is a crisp legal issue captured in the following words in **HERBESTEIN AND VAN WINSEN'S: THE***



***CIVIL PRACTISE OF THE SUPREME COURT OF SOUTH AFRICA,  
4TH EDITION, JUTA AND COMPANY, AT PAGE 689;***

*The basic rules for interpreting the judgement or order of a Court are no different from those applicable to the construction of documents. The Court's intention has to be ascertained primarily from the language of the judgement or order as construed according to the usual well-known rules. The judgement or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention. If on such a reading the meaning of the Judgement or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify or supplement it. But if any uncertainty in meaning emerges, the extrinsic circumstances surrounding or leading up to the court's grant of the judgement or order may be investigated and taken into account in order to clarify it. The rule that no evidence is admissible to contradict, amend or add to an order which is clear and unambiguous is a rule of law, not merely a rule of evidence that can be waived by the parties. "*

[15] The Court issued an order in the following terms;

- 1) The variation of the Applicant's suspension from being one on half pay taken through a letter dated 18 July, 2022 is set aside.
- 2) The Applicant's salary is to be reverted to full pay, on or before the next pay roll.
- 3) There is no order to costs.

[16] The Respondent proceeded to pay the Applicant her full pay but however effected such payment from 20<sup>th</sup> October, 2023, and did not pay the Applicant

the shortfall of her salary for the month of July, August and September, 2023. From the argument of the parties the problem now is that they both have a different understanding /interpretation of prayer two of the order and have approached the Court to clarify its order.

[17] The Court fails to understand the nature or basis of the misunderstanding of the Court's judgment. The Court says this because the issue in contention was the change of the Applicant's suspension from suspension on full pay to half pay, and the Court ruled on this point, and issued out an order and the suspension on half pay was set aside, and directed that the Applicant's suspension be reverted to a suspension on full pay. The suspension was **to** be affected on or before the next pay roll, not with effect from the next payroll.

[18] In essence the Court was saying the suspension on half pay taken through correspondence dated the 18<sup>th</sup> July, 2022 is set aside, and that the suspension be reverted to full pay effective 18<sup>th</sup> July, 2022, the date on which the decision to suspend the Applicant on half pay was taken. The second order by the Court merely stipulated that the order should be complied with on or before the next pay roll. The Court taking into consideration that the Respondent has a payroll system in place which may make it difficult for the Respondent to comply with before the next payroll. Consequently, the Respondent is ordered to comply with the order issued by the Court and pay the Applicant the shortfall in her salary for the months, July, August and September, 2022.

[19] The Applicant has further applied for an order of costs against the

Respondent. It is trite law that the Court has discretion in matters of costs.

The Court. in the present matter has considered the requirements of fairness and a need to maintain a harmonious work relationship between the parties, and make no order as to costs against the Respondent. each party therefore will pay its own costs.

(20] Accordingly, the Court makes the following order.

- 1) The application is granted.
- 2) Each party is to pay its own costs.

The Members Agree.



R. NGCWA  
**b MP ;(I)it, \J**

**ACTING JUDGE OF THE INDUSTRIAL COURT OF SWAZILAND**

**For Applicant:** Mr. Dlamini (B. S Dlamini & Associates).

**For Respondent:** Mr. S. Simelane (SM Simelane & CO)