IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 46/07

In the matter between:

SABELO SHONGWE	**APPLICANT**
And	
FIDELITY SPRINGBOK SECURITY SERVICES (PTY) LTD	**RESPONDENT**

CORAM:

NKOSINATHI NKONYANE :	**JUDGE**
DAN MANGO :	**MEMBER**
GILBERT NDZINISA:	**MEMBER**
FOR APPLICANT:	**MR. D. NGCAMPHALALA**
FOR RESPONDENT:	**MR. S. DLAMINI**

JUDGEMENT 04.05.07

[1] This is an application that was brought by the applicant against the respondent for an order that an agreement entered into by the parties be made an order of the court.

[2] The agreement is annexed to the applicant's application and is marked annexure "A". The agreement was entered into by the parties in terms of Section 13 (1) of the Workmen's Compensation Act No.7 of 1983 (hereinafter referred to as the Act).

[3] The agreement relates to the payment of the sum of E54J53.30 to the applicant as compensation for personal injuries suffered by the applicant whilst in the course of his employment.

[4] The respondent is opposed to the application. The basis of the opposition is that the applicant has already been paid a sum of E6,234.30 as compensation for the personal injuries that he sustained whilst on duty on the 29th December 2004.

[5] It was argued on behalf of the respondent that the Labour Commissioner was therefore *functus officio,* and had no right to entertain a second application for compensation based on the same injuries that were assessed by a medical practitioner and the applicant paid the said sum of E6,234.30 as compensation.

[6] It was further argued on behalf of the respondent that the second agreement form was signed by its Manager was signed in error and should not be enforced.

[7] What is clear to the court is that the applicant was paid the amount of E6,234.30 as compensation for the personal injuries that he sustained in the course of his employment. The applicant however stated in paragraph 3 of his replying affidavit that:

> *"... / deny that I accepted the assessment and the payment. I made it clear to the respondent from day one that I was not happy with the payment as I felt that my injuries were more severe than the compensation I was getting. The respondent allowed me to have a second doctor's opinion and mentioned that the compensation was going to be made by the company insurance. "*

[8] Unfortunately, there was no evidence before the court as to the type of disablement that led the Labour Commissioner to calculate the amount of compensation at E6,234.30. Was it compensation for permanent disablement, temporary partial disablement or temporary incapacity?

[9] If the initial payment of E6,234.30 was based on permanent disablement, the Labour Commissioner had no jurisdiction to entertain the second assessment for compensation without first referring the matter to the Workmen's Compensation Medical Board.

[10] If, however, the first compensation was based on temporary partial disablement, at the termination of the period of the temporary partial disablement the workman would be entitled to be re-examined by a medical practitioner provided it is within a period of twelve months. (See section 8(2) of the Act).

[11] What is clear therefore is that in terms of the Act, in the case of temporary partial disablement, it is possible for the workman to be re-examined and the percentage of disablement, if any, then persisting assessed.

[12] The Act makes a distinction between permanent disablement, temporary partial disablement and temporary incapacity. These distinctions are spelt out under Sections 7, 8 and 9 respectively of the Act.

[13] The burden was upon the applicant to prove that the first compensation was for a temporary partial disablement and that he was therefore was entitled to be re-examined by a medical practitioner and assessed within a period of twelve months as envisaged by Section 8(1) and (2) of the Act.

[14] If the applicant was not satisfied with the amount of compensation that he received, as it appears from his replying affidavit, he was entitled to lodge a complaint to the Labour Commissioner. There was no evidence before the court that he did that. From the evidence presented in court, there is no legal basis for the second medical assessment.

[15] There is no provision in the Act for the workman and the employer to agree with each other that the workman should go and get a second medical assessment.
The rationale for this is not hard to see. If it were allowed, it could open flood gates for fraudulent claims. The Act only provides that if any of the parties disagrees with the amount of compensation, that other party should apply to the Labour Commissioner. (See section 14 (1) of the Act).

[16] The present application is clearly not in accordance with the provisions of the Act. It cannot therefore be allowed. There will be no need for the court to consider the other grounds raised by the respondent as it is clear that the agreement is in violation of the Act.

[17] Taking into account all the above observations, the court will make the following order;

1. *That the application is dismissed.*
2. *No order for costs is made.*

The members agree.

NKOSINATHI NKONYANE
JUDGE— INDUSTRIAL COURT