

IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO.

In the matter between:

MEMORY MATIWANE APPELLANT

AND

CENTRAL BANK OF SWAZILAND RESPONDENT

CORAM : BROWDE J A

: STEYN J A

: BECK J A

FOR THE APPELLANT : MR. SHABANGU

FOR THE RESPONDENT : MR. P. FLYNN

JUDGMENT

Browde J A:

The question for decision in this appeal succinctly put, is whether the High Court of Swaziland has jurisdiction to review a decision of the Industrial Court of Appeal. Masuku J who delivered judgment in the High Court on 8th March 2000 has comprehensively dealt with the issue and has admirably analysed the powers of the courts with particular reference to the Constitution, the High Court Act 20/94, the High Court Rules, the Industrial Relations Act 1996 and the common law.

I agree entirely with what the learned Judge said in the court below and find it necessary only to accentuate one or two aspects of his judgment.

Briefly stated the facts were as follows:-

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The appellant initiated proceedings in the Industrial Court in October 1993 alleging that the Central Bank of Swaziland, second Respondent in this appeal, had unfairly terminated the appellant's employment. The Industrial Court awarded the appellant an amount of E25,663.00. The second Respondent then appealed to the Industrial Court of Appeal which court upheld the appeal holding that the Industrial Court had, by excluding certain evidence, precluded itself from coming to a proper decision. The judgment of the Industrial Court of Appeal ended with the words, "it follows that the appeal must succeed on the points of law raised and the decision of the court a quo be set aside." It is against that decision of the Industrial Court of Appeal that the appellant lodged an application to the High Court and sought an order that the judgment of the Industrial Court of Appeal " be reviewed, corrected and/or set aside."

In his analysis of the powers of the High Court Masuku J referred to Section 4(1) of the High

Court Act 20 of 1954 which empowers the High Court to review proceedings of all subordinate courts of justice within Swaziland. Although there is no definition of "subordinate courts" in the High Court Act nor in the Interpretation Act 21 of 1970 I am of the opinion that the learned Judge a quo was correct in expressing "the firm view that the Industrial Court of Appeal cannot be regarded as an inferior court of justice." It is not a court of record and has appellate jurisdiction which is quite inconsistent with being an inferior court in this country.

Masuku J also referred to provisions of the Constitution which in terms of Section 97(1) created the High Court and by Section 104 defined that Court's powers by, inter alia, providing that its "revisional jurisdiction" was that which it possessed at the commencement of the Constitution. As Masuku J, in my opinion correctly, inferred, "revisional jurisdiction" means the power to review decisions and proceedings. At the commencement of the Constitution the powers of the court were those already referred to in Section 4(1) of the High Court Act which confer no power of the court to review a decision or proceedings of the Industrial Court of Appeal. In any event that Appeal Court was not in existence when the Constitution became law in this Kingdom.

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The only other aspect of the matter which I wish to stress concerns section 11 of the High Court Act. section 11(1) reads:-

"There shall be a right of appeal against the decision of the Court on a question of law to the Industrial Court of Appeal."

It is obvious that in this sub-section "Court" means the Industrial Court. This is further borne out by section 11(2) which reads:

"The Industrial Court of Appeal, in considering an appeal under this section shall have regard to the fact that the Court is not bound by the rules of evidence or procedure which apply in civil proceedings."

Section 11(5) reads as follows:

"A decision, or Order of the Court shall at the request of any interested party be subject to review by the High Court on grounds permissible at common law."

It is once again clear that "court" means the Industrial Court as it could not have been the intention of the Legislature to use the word "Court" in different senses in sub-sections of the same section. That it was found necessary to express the power of the High Court to review a decision or order of the Industrial Court necessarily indicates that the High Court has no power to review a decision of the Industrial Court of Appeal. As it was put by Masuku J:-

"What is abundantly clear therefore is that the Legislature gave jurisdiction to the High Court to review the decisions of the Industrial Court only. Had Parliament intended to extend that power to reviewing the proceedings, decisions or orders of the Industrial Court of Appeal, it would have expressed its intention in clear language. What transpires therefore is that Parliament intended the Industrial Court of Appeal to be the last port of call in all industrial matters and with its decisions becoming final."

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As I have said I agree entirely with the judgment of the learned Judge a quo and consequently the appeal is dismissed with costs.

J. BROWDE J A

I AGREE:

J.H. STEYN J A

I AGREE:

C. E. L. BECK J A

Delivered on this 19th day of December 2000.