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IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE CIV. APPEAL 9/93

In the Matter between

JAMES DLAMINI APPELLANT

AND

THE SWAZI OBSERVER RESPONDENT

CORAM: DUNN J.

FOR THE APPELLANT: MR G.B. SIMELANE
FOR THE RESPONDENT: MR P. SHILUBANE

JUDGMENT

29 APRIL 1994

This is an appeal against a decision of the Industrial Court. The appellant was employed by the respondent between 1981 and August 1992, when his services were terminated. Negotiations took place between the parties regarding payment of the appellant's terminal benefits. The negotiations culminated in the following letter being addressed to the appellant's attorney's by the attorneys for the respondent-

RE: JAMES DLAMINI/SWAZI OBSERVER

We refer to the above and enclose herewith client's cheque for E4,628.86 in full and final settlement of your client's claim.

The appellant's attorneys banked the cheque after endorsing it in the left hand corner with the words "accepted without prejudice". No formal acknowledgment of receipt of the cheque was made by the appellant's attorney. Thereafter on the 26th November 1992 the appellant's attorney wrote to the respondent's attorney as follows-

> Further to our letter dated 23rd November 1992. Your client was to pay our client as follows-
>
> | | |
> |---|---|
> | 1. Notice 1 month salary | E1 395.00 |
> | 2. Additional Notice | 2 282.73 |
> | 3. Severance Allowance | 5 706.82 |
> | 4. Leave | 4 628.86 |
>
> Further our client has to be paid the the annual increment with effect from May 1992 to August. If payment is not made within 7 days of receipt of this letter we are instructed to declare a Labour dispute.

The appellant's letter of the 23rd November 1992 does not form part of the documents in the present appeal, an attempt to have it produced in the Industrial Court by the appellant having been refused by the President of that Court.

Attempts at reconciliation in terms of the Industrial Relations Act No. 4/1980 failed. The respondent maintained that the appellant's claim had been settled. A certificate of an unresolved dispute was issued by the Labour Commissioner on the 31st August 1993 and the matter came before the Industrial Court.

The Industrial Court ruled in favour of the respondent and held that the acceptance of the respondent's cheque by the appellant finally settled the appellant's claim.

The grounds of appeal are not altogether clear and are somewhat repetitive. They are as follows-

1. The Court a quo erred in law-

   (a) In finding that the cheque dated 18th November 1992 marked "accepted without prejudice" was priviledged and therefore inadmissible.

   (b) In not finding that the ordinary principle applicable in determining whether correspondence was without prejudice is the ordinary principle applicable to a contract, that is the intention of the parties.

   (c) In not finding that in order to ascertain the intention in conducting the without prejudice correspondence, an objective approach is ordinarily adopted.

   (d) In that he found that the words on the cheque " accepted without prejudice " meant nothing and that the acceptance of the cheque was acceptance of the offer in full and final settlement of the applicant's claim.

(e) The Learned judge erred in not taking into consideration that the correspondence that followed thereafter made it clear that the cheque was accepted on without prejudice basis.

I am at a loss as to ground 1 (a). The respondent's cheque formed part of the papers before the Industrial Court. It was on the basis of the acceptance of that cheque by the appellant that the Industrial Court held the appellant's claim to have been settled. In so far as the remaining grounds are concerned the only reference to the words " accepted without prejudice "in the correspondence between the parties which was placed before the Industrial Court was the endorsement on the cheque. The endorsement could only have come to the attention of the respondence after the cheque had been cashed by the appellant and returned to the respondent.

Given the history of the negotiations between the parties the respondent's letter of the 18th November 1982 was clearly an offer of compromise. The offer was for the payment of the E4,628.86 as a settlement of the appellant's claim. The appellant accepted the cheque. In so accepting payment, the appellant accepted the offer. If he did not accept the offer he should have returned the cheque and sued for the full amount claimed see **VAN BREUKELEN v VAN BREUKELEN 1966 (2) SA. 285, ANDY'S ELECTRICAL v LAURIE SYKES (PTY) LTD 1979 (3) SA 341 and PATERSON EXHIBITIONS CC v. KNIGHTS ADVERTISING & MARKETING CC 1991 (3) SA. 523.**

The Industrial Court President quite correctly in my view, approached the matter simply as a question of offer and acceptance and concluded that a final settlement had been reached between the parties. The appellant was in the circumstances correctly held to be precluded from proceeding for the balance of his original claim.

The appeal is dismissed with costs.

B. DUNN

JUDGE