



IN THE SUPREME COURT OF ESWATINI
JUDGMENT

Case No. 63/2020

HELD AT MBABANE

In the matter between:

**SWAZILAND COMMERCIAL & ALLIED
WORKERS UNION o.b.o ZANELE MAMBA
AND TWELVE OTHERS**

Appellants

And

LEWIS STORES

Respondent

Neutral Citation: *Swaziland Commercial and Allied Workers Union o.b.o Zanele Mamba & 12 Others (63/2020) [2021] SZSC 47 (21/12/2021)*

Coram: **S.P. DLAMINI JA, R.J. CLOETE JA AND S.J.K. MATSEBULA JA.**

Heard: 19th October, 2021.
Delivered: 21st December, 2021.

SUMMARY : *Whether the High Court has jurisdiction to hear reviews relating to labour related matters emanating from structures formed in terms of the provisions of the Industrial Relations Act – In the light of the majority Judgment in the Cashbuild matter, the High Court has no jurisdiction to hear such matters which are exclusive to the Industrial Court and the Industrial Court of Appeal being specialised Courts established by an Act of Parliament – The decision of the High Court is set aside. In the interests of justice the matter is referred back to CMAC to be heard by a new arbitrator.*

JUDGMENT

R.J. CLOETE – JA

[1] This matter emanates from a decision of the Conciliation, Mediation and Arbitration Commission (CMAC) which handed down an award in favour of the Appellants in this matter.

[2] The Respondent decided to institute review proceedings in the High Court and sought the following order:

- “1. Reviewing and setting aside the arbitration award issued by the Second Respondent dated 12 March 2020, in relation to the dispute between the Applicant and the First Respondent under the Third Respondent’s case number SWMB 431/17;**
- 2. Remitting the matter back to the Third Respondent for a hearing de novo by an arbitrator other than the Second Respondent.”**

[3] On 29 September 2020 the High Court issued the following order:

- “30.1 The applicant’s application succeeds;**
- 30.2 The arbitrator’s award is hereby reviewed and set aside.”**

[4] The Appellants then sought leave to appeal to this Court sitting in its appellate jurisdiction against the judgment of the High Court.

[5] After hearing the parties the Court requested both parties to file Heads of Argument as to whether the High Court had jurisdiction to hear the review

proceedings concerned and the Court is indebted to both parties for filing their considered opinions.

[6] This is in my view a “*labour*” related issue and this matter has been overtaken by events.

[7] In the matter of **Cashbuild Swaziland (Pty) Limited and Thembi Penelope Magagula 26B/2020 SZSC 31** handed down on 9 December 2021 the majority judgement of the full Bench of this Court found that:

1. The High Court has been stripped of its powers of review in respect of all labour related matters in the light of the Industrial Court being clothed with exclusive jurisdiction of all “*labour*” related matters in terms of Section 8(1) of the provisions of the Industrial Relations Act of 2000 which read;

“8.(1) The Court shall, subject to sections 17 and 65, have exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of an application, claim or complaint or infringement of any of the provision of this Act, the Employment Act, the Workmen’s Compensation Act or any other legislation which extends jurisdiction

to the Court, or in respect of any matter which may arise at common law between an employer and employee in the course of employment or between an employer or employers' association and a trade union, or staff association or between an employees' association, a trade union, a staff association, a federation and a member thereof." (my underlining)

2. Both the Industrial Court and the Industrial Court of Appeal are "*specialised*" Courts established by an Act of Parliament and not subordinate Courts.

3. Section 20(1) and (2) of the Industrial Relations Act provides for the establishment of the Industrial Court of Appeal ("ICA") and reads as follows:

"20.(1) There is established an Industrial Court of Appeal which shall have the same powers and functions as the Supreme Court but shall only deal with appeals from the Industrial Court.

(2) The Industrial Court of Appeal shall consist of a Chief Justice and two Justices of Appeal, all of whom shall have the same qualifications as judges of the Supreme Court and shall be appointed in the same manner as the Judges of the Supreme Court.” (my underlining)

4. That the provisions of Section 19(5) of the Industrial Relations Act are unconstitutional and are struck down. This Section read as follows:

“19. (5) A decision or order of the Court or arbitrator shall, at the request of any interested party, be subject to review by the High Court on grounds permissible at common law.”

5. That accordingly neither the High Court nor this Court have jurisdiction to hear appeals or reviews of any matter emanating in the Industrial Court or the Industrial Court of Appeal.

[8] The Majority Judgment in the Cashbuild matter will prevail and be binding on the High Court and the Supreme Court.

[9] Accordingly the High Court did not have jurisdiction to hear this matter which is a “*labour*” related matter over which the Industrial Court has exclusive jurisdiction and as such the order of the High Court has to be set aside. It must be mentioned that even though overtaken by events, the Court *a quo* did not order that the matter be referred back to CMAC to be heard by a new Arbitrator which was the essence of what the Respondent was applying for in the review proceedings. Since that should have been the order of the High Court had it had the jurisdiction to hear the matter, in the interests of justice and as we are empowered to do in terms of the provisions of Rule 33(3) of the Rules of this Court, we will order that the matter be referred back to CMAC for the matter to be reheard by another arbitrator.

[10] It is trite that in labour related matters and matters which turn on the Constitution it is usual that no cost orders are made.

[11] Accordingly it is ordered that:

1. The Judgment of the High Court dated 29 September 2020 is set aside.
2. The matter is referred back to CMAC for it to be reheard *de novo* by a new arbitrator.
3. Each party shall bear their own costs.

I agree



R.J. CLOETE
JUSTICE OF APPEAL

I agree



S.P. DLAMINI
JUSTICE OF APPEAL



JUSTICE S. MATSEBULA, AJA

For the Appellants: BS DLAMINI ATTORNEYS

For the Respondent: HENWOOD AND COMPANY ATTORNEYS