

**IN THE CONCILIATION, MEDIATION AND ARBITRATION COMMISSION (CMAC)**

**Held in Manzini**

**CMAC REF: SWMZ 63/09**

**In the matter between:**

**Juluka Dlamini**

**Applicant**

**AND**

**J J Signs**

**Respondent**

**CORAM:**

**Arbitrator : Mr Robert Mhlanga**  
**For Applicant : Mr M Mbonane**  
**For Respondent : Mr T Mamba**

**ARBITRATION AWARD**

**Venue: CMAC Offices, Enguleni Building, Ground Floor, Manzini**

**1- DETAILS OF HEARING AND REPRESENTATION**

1.1 The applicant is Juluka Dlamini, an adult swazi male who was duly represented herein by Mr. Melusi Mbonane from David Msibi and Associates.

1.2 On the other hand the respondent is J.J Signs, which was duly represented herein by Mr. Thamsanca Mamba from Maduduza Zwane Labour Law Consultants.

**2. BACKGROUND OF THE DISPUTE**

2.1 The applicant, Juluka Dlamini alleged that his services were unlawfully and unfairly terminated by the respondent under the pretext of redundancy.

2.2 Pursuant to the alleged unfair dismissal herein, the applicant demanded from the respondent the following terminal benefits namely;

- (a) Notice pay in the sum of E950.00 and
- (b) Compensation for unfair dismissal which is equivalent to 12 months salary amounting to E11 400.00

2.3 It is common cause that the respondent did not comply with the applicant's aforesaid demand. Subsequently, the applicant reported a dispute of unfair dismissal to the Commission in terms of Section 76 of the Industrial Relations Act 2000 as Amended.

2.4 The dispute was conciliated upon, but it was not resolved; consequently a Certificate of Unresolved Dispute was accordingly issued by the Commission.

2.5 Subsequently, by consent the parties referred the matter to arbitration for determination of the dispute herein. On the 25<sup>th</sup> May 2009, a pre-arbitration

**-2-**

meeting was held. During this meeting, the parties agreed on the number of witnesses each party intended to call; they also agreed about the discovery or exchange of documents to be used during the arbitration hearing.

**3. ISSUE IN DISPUTE**

3.1 The question which falls for determination herein is whether or not the applicant's termination of services was in compliance with the provisions of Section 36 of the Employment Act 1980 as Amended.

#### **4. SUMMARY OF EVIDENCE**

I have only summarized the evidence which I deem relevant in making my award.

##### **4.1 Applicant's Case**

In the applicant's case, Juluka Dlamini, the applicant herein, was the only witness who testified in support of his case.

##### **Juluka Dlamini's Testimony**

4.1.1 Juluka Dlamini, duly sworn gave his testimony in this case. I will refer to this witness as Mr. Dlamini or the applicant as the case may be.

4.1.2 Mr. Dlamini testified that he is 29 years old; he is married with four (4) minor children. It was Mr. Dlamini's testimony that he was the respondent's former employee, having been employed on the 2<sup>nd</sup> April 2008, as a sign writer. Mr Dlamini further testified that on the 28<sup>th</sup> November 2008, the respondent

-3-

through its Director, Mr. January Masina caused him to sign the form in the Second Schedule under section 22 of the Employment Act 1980 as Amended, containing the particulars of employment. The applicant alleged that at the same time, the respondent's Director caused him to sign a new fixed-term contract of one month, which was meant to run from the 17<sup>th</sup> November to 17<sup>th</sup> December 2008. Copies of both the form in the second schedule (particulars of employment) and the new fixed term contract of one month are filed of record and are marked as Annexure "JD3" and "JD6" respectively.

4.1.3 The applicant further testified that on the 5<sup>th</sup> December 2008, the respondent's Director also served him with a purported notice of retrenchment. A copy of the said notice of retrenchment dated 5<sup>th</sup> December 2008 is filed of record. The notice of retrenchment was to the effect that the applicant's services would be terminated at the end of December 2008. The applicant stated that the respondent never consulted him prior to the issuance of the purported notice of retrenchment. The applicant stated that he learnt for the first time, through the notice of retrenchment, that his services would be terminated at the end of December 2008.

4.1.4 The applicant said that no valid reason was advanced by the respondent to warrant the termination of his services under the pretext of redundancy. The applicant alleged that after his dismissal, the respondent re-employed Bhekithemba Bhembe.

-4-

4.1.5 In conclusion the applicant prayed that an award be granted in his favour, directing the respondent to pay him the terminal benefits being sought herein namely; (a) Notice pay = E950.00 and (b) Compensation for unfair dismissal(12 months' salary) = E11 400.00.

##### **Cross Examination**

4.1.6 Under cross examination, the applicant maintained that he was never consulted by the respondent prior to the termination of his services. The applicant disputed the respondent's allegations that all the employees were consulted and or informed about the contemplated retrenchment due to the company's bad financial situation. The applicant insisted that he did not know the reason for his retrenchment.

4.1.7 It was put to the applicant that he knew the reason for the retrenchment, because the respondent has had consultative meetings with the employees wherein the issue of the contemplated

retrenchment was deliberated upon. In response, the applicant refuted the allegations. The applicant stated that no consultative meetings were held, but that only the usual staff meetings were held. In particular, he testified that he recalled a staff meeting wherein the Director informed them about the lost vinyl (company property). He said that a sum of E50.00 was deducted from his salary for the replacement of the lost property or material.

## **4.2 Respondent's Case**

4.2.1 Two witnesses testified in support of the respondent's case namely; the respondent's

-5-

Director, Mr. January Masina and Nompumelelo Mavuso.

### **January Masina's Testimony**

4.2.2 I will refer to this witness as Mr. Masina and or RW1 as the case may be. January Masina testified under oath. He stated that he is the respondent's owner or Director. Mr. Masina testified that the applicant was fairly retrenched together with his two fellow employees namely; Jafer Hlatshwako and Bhekithemba Bhembe due to operational reasons.

4.2.3 He said that the company was in bad financial situation, because the volume of work or business had since declined, hence the need to reduce the staff. Mr Masina stated that the respondent's main client, Swaziland Brewery was no longer giving work to the respondent company. Mr Masina stated that the respondent's financial ills started in or about August 2008.

4.2.4 It was RW1's testimony that the company was struggling to make ends meet in such a way that he was forced to borrow money in order to pay the employees' monthly wages. In this regard, reference was made to the respondent's bank statements as proof that the respondent was in financial crisis.

4.2.5 RW1 alleged that all the employees (including the applicant) were informed about the prevailing bad financial situation of the company. He said the respondent had consultative meetings with the employees from time to time, wherein the issue of the company's financial ills were deliberated

-6-

upon. He said that all employees have had an opportunity to make an input towards the averting of the contemplated retrenchment.

4.2.6 RW1 testified that in or about November 2008, a staff meeting was held wherein inter alia the following issues namely; poor time keeping or late coming, poor work performance and absence without leave or authority were discussed. In particular he mentioned that the applicant had a tendency of coming late to work and leaving early or knocking off before the actual knock off time (without the management's permission).

4.2.7 It was RW1's evidence that, given the employees' poor work performance, the management introduced the one month fixed-term contract, which was applicable to all the employees. He stated that the fixed term contract was purposely introduced to enhance the employees' performance. He stated that the employees were assured that this would not be used by the management to victimize them. RW1 said that the fixed-term contract could not affect the basic contract of employment, in particular, the date of engagement would not be affected or changed. Mr. Masina (RW1) described this contract as a "Performance Contract".

4.2.8 Mr. Masina stated that the applicant's services were lawfully and fairly terminated. It was Mr. Masina's testimony that before the affected employees were retrenched, he first sought advice from the Labour office. He testified that he was advised to give the affected employees one month notice and to pay them all their terminal benefits. He said that he was advised that in the event the situation in his business normalized and should

there be a need to employ, first preference should be given to the retrenched employees.

4.2.9 Mr. Masina testified that only three employees were eventually retrenched namely; Juluka Dlamini (applicant), Bhekithemba Bhembe and Jafer Hlatshwako. Nomphumelelo Mavuso and Phumlani Sihlongonyane were retained by the respondent. With regard to the selection criteria, Mr. Masina said that he considered inter alia, the employee's consistent attendance for duty, time keeping (punctuality) and skill possessed by that employee. In the instant case, he mentioned that Phumlani was retained due to the fact that he is a hard worker and an all-round.

4.2.10 Mr. Masina testified that since the applicant's departure, no one has been employed to replace him. He admitted that Bhikithemba Bhembe was recalled on a temporary basis, due to the fact that the company had some work which needed to be done. However, he said that Bhikithemba has since left the company. Mr Masina stated that the respondent from time to time, used to have a student, Thabiso who is an aspiring Graphic Designer. This student is said to be doing his practicals as part of his academic exercise or assignment; otherwise he is not employed by the respondent.

4.2.11 Mr. Masina stated that one time the respondent wanted to re-engage the applicant temporarily because there was some available work; but unfortunately the respondent could not get hold of him due to the fact that the applicant did not answer his phone. In conclusion, Mr. Masina maintained that the applicant was lawfully and fairly retrenched due to the respondent's

precarious financial situation. Mr. Masina said that currently, the respondent's financial situation has not yet improved.

#### **Cross Examination**

4.2.12 During cross examination, RW1 (Mr. Masina) maintained that all the affected employees knew the reason for their retrenchment because they were informed of the respondent's bad financial situation during the meetings the respondent have had with them (employees).

4.2.13 It was put to RW1 that no consultative meetings between the respondent and the applicant were convened. RW1 maintained that the applicant was consulted before his services were terminated.

4.2.14 It was further put to RW1 that the applicant was never consulted before the new fixed-term contract was introduced by the respondent. RW1 in response insisted that all employees (including the applicant) were consulted.

4.2.15 RW1 admitted that on the 17<sup>th</sup> November, 2008 the applicant was made to sign both the particulars of employment form and the fixed term contract of one month simultaneously. RW1 stated that the two documents co-existed, which means that the fixed term contract did not revoke the original contract of employment as evidenced by the second schedule (particulars of employment).

4.2.16 It was put to RW1 that the applicant's retrenchment was unlawful in that it was not in compliance with the provisions of Section 40 of the Employment Act 1980 as Amended. RW1

disagreed with that; he insisted that the respondent complied with all the requirements of the law before the retrenchment was effected.

#### **Nomphumelelo Mavuso's Testimony**

4.2.17 The respondent also led the evidence of Nomphumelelo Mavuso. I will refer to this witness as RW2 or Ms Mavuso as the case may be.

Ms Mavuso gave her testimony under oath, and she testified that she is the respondent's former employee. She testified that currently she is employed by Auto Aircon, in Manzini. Ms Mavuso stated that the applicant was her colleague at J.J Signs. She confirmed that the applicant left J.J Signs on the 23<sup>rd</sup> December 2008.

4.2.18 It was RW2's evidence that to her knowledge staff meetings used to be convened at J. J Signs. However, she said that she could not recall, the dates on which these meetings were held. With regard to the contemplated retrenchment, RW2 stated that she did not remember this issue being discussed in any of the staff meetings.

4.2.19 Regarding the fixed term contract of one month, it was RW2's evidence that all the employees signed it. She testified that the one month fixed term contract was introduced by the respondent to address the problem of frequent absenteeism, late coming and poor work performance.

### **Cross Examination**

4.2.20 Under cross examination RW2 admitted that the resolution to introduce the one month fixed term contract was taken privately without the involvement or prior consultation with the employees.

-10-

4.2.21 RW2 was asked if she is the one who took minutes during the two staff meetings which were held on the 8<sup>th</sup> October and 4<sup>th</sup> November, 2008, as per the respondent's Annexure 'JJ2', being the minutes of the staff meetings aforesaid. In response, RW2 stated that she could not vouch for the truthfulness and accuracy of the contents of the minutes as reflected in Annexure "JJ2". She said that this is because, these minutes are typewritten, yet the minutes which she took were handwritten on a counterbook. She also testified that there was one instance where she was required to take minutes in one of the staff meetings; but unfortunately she could not remember the date of that particular meeting.

4.2.22 Still on the issue of the minutes, RW2 was shown Annexure "JJ2", being the minutes of the meetings aforementioned. She was then asked if she knew the contents thereof. RW2 responded that she was not sure, but she said that part of what was written there was discussed in one of the staff meetings. But overall she said that she could not vouch for the truthfulness of same. RW2 further stated that Mr Masina (RW1), in the company of the respondent's representative, Mr Mamba recently came to her place of work and she was forced to sign Annexure "JJ" (minutes) without being given an opportunity to read the minutes first, before appending her signature.

## **5. ANALYSIS OF EVIDENCE AND SUBMISSIONS**

5.1 In the present case both parties filed their closing submissions in support of their respective cases.

5.2 In a nutshell, the applicant's case is that his services were unfairly terminated by the respondent under the pretext of redundancy. It is the applicant's

-11-

submission that the respondent failed to observe a fair Labour Practice with regard to his retrenchment.

5.3 The applicant argues that the respondent did not consult with him prior to his retrenchment. It is the applicant's submission that no consultations were held between the parties to deliberate on the company's financial situation. The applicant alleged that only "reprimand" meetings were held.

5.4 The applicant submits that the purported minutes (Annexure "JJ2") were not authentic, due to the fact that the signature of RW2, who allegedly took the minutes was fraudulently obtained. The applicant prays that Annexure "JJ2" should not be considered at all.

5.5 It is also the applicant's contention that the respondent failed to apply a fair selection criterion

when effecting the retrenchment.

5.6 The applicant further argues that no reason for his retrenchment was given by the respondent herein. The applicant also submits that in this case, the respondent failed to consider the alternatives to avoid or minimize the effects of the retrenchment. In this regard, reference is made to John Grogan's 'Rickert's Basic Employment Law at page 114 wherein it is stated that; "when the need for retrenchment become apparent, the employer should consider, and where possible implement alternative cost-saving measures which may include short-time, unpaid leave, a moratorium on the hiring of new employees, transfer of employees, the offering of early retirement, the reduction of salaries, the granting of unpaid leave and so on".

-12-

5.7 On the other hand it is argued by the applicant that his dismissal or retrenchment was not based on economic need, but he was retrenched because he was said to be a poor performer and also that he frequently absented himself from work. In light of the foregoing submissions the applicant prays that an Award be granted in his favour, directing the respondent to pay him, (a) notice pay and (b) 12months salary as compensation.

5.8 On the contrary, it is argued on behalf of the respondent that the applicant's services were lawfully and fairly terminated. It is submitted on behalf of the respondent that a commercial rationale existed, which justified the applicant's retrenchment. It is argued that the respondents have had financial difficulties, and thus it was compelled, in the circumstances, to terminate the applicant's services. In this regard, I was referred to annexure "JJ3" to substantiate this allegation.

5.9 With regard to payment of terminal benefits, it is argued herein, that the Applicant was paid all his terminal benefits.

5.10 In conclusion, the respondent prays that the applicant's application be dismissed.

5.11 In casu, the task I am faced with is to decide whether or not the termination of the applicant's services (retrenchment) was fair and reasonable in the circumstances of the case.

5.12 The applicant's services were purportedly terminated in terms of section 36 (J) read in conjunction with section 40 (2) of the Employment Act 1980 as amended. The onus is on the respondent to prove, in terms of section 42 (2) (a) and (b) that, taking

-13-

into account all the circumstances of the case, it was fair and reasonable to terminate the applicant's services.

5.13 In its endeavour to discharge the onus placed on it by the aforementioned section 42, the respondent led the evidence of two witnesses namely; January Masina (RW1) and Nomphumelelo Mavuso (RW2). Over and above the oral evidence of the aforesaid witnesses, the respondent also seeks to rely on Annexure "JJ2", being the minutes of the staff meetings allegedly held on the 8<sup>th</sup> October, and 4<sup>th</sup> November, 2008. The respondent also relies on Annexures "JJ3" and "JJ4". Annexure "JJ4" is the notice of retrenchment.

5.14 According to Mr Masina's testimony, the reason which led to the Applicant's retrenchment was the respondent's bad financial situation. He said that the volume of work had since diminished, due to the fact that, his main client, Swaziland Brewery was no longer giving work to the respondent company. His evidence was that the bad financial situation was experienced as early as August, 2008. The issue in dispute is whether or not the respondent informed the applicant about the alleged financial difficulty, the respondent was in. Secondly, whether or not consultation took place to consider inter alia, alternatives to mitigate the effects of the retrenchment or measures to avert it.

5.15 The respondent's case is premised on the evidence of Mr Masina (RW1) and Nomphumelelo Mavuso (RW2), plus Annexures "JJ2" and "JJ3". With regard to the question, whether or not the applicant was consulted prior to his retrenchment; it is my considered view that the evidence of RW1

and RW2 is in contradiction and or at variance. RW1 testified

**-14-**

that all the employees (applicant inclusive) were consulted and informed about the respondent's financial difficulties and the contemplated retrenchment. On the other hand, RW2 testified that although staff meetings were held, but the company's bad financial situation and the contemplated retrenchment were never discussed in any of these meetings. RW2 also stated that she could not recollect the dates on which the staff meetings were held. She also testified that there was one instance (though she did not remember the date) when she was required to take the minutes of the meeting.

5.16 Under cross examination, RW2 denied or disputed the minutes which were allegedly taken by her during the aforesaid meetings.

5.17 In light of the dispute surrounding Annexure "JJ2", therefore I am not going to take it into account as part of the respondent's evidence. In fact, to set the record straight regarding this document, it was agreed between the parties' representatives, in the presence of the arbitrator (myself) that Annexure "JJ2" would not be admitted until and unless the respondent's representative produces the counter-book containing the original handwritten minutes, for purposes of verifying its authenticity and accuracy. Mr Mamba (respondent's representative) failed to produce the original minutes, and on the 9<sup>th</sup> July, 2008 it was ultimately agreed between the parties that Annexure "JJ2" should not be admitted or considered as part of the respondent's evidence herein. As I have already stated, Annexure "JJ2" will not be considered, and thus it is hereby rejected.

**-15-**

5.18 It follows that, without Annexure "JJ2", Mr Masina's (RW1) testimony can not be sustained, as it remains uncorroborated.

5.19 For argument's sake, even if Annexure "JJ2" were to be admitted and considered as part of the respondent's testimony, still the respondent would have an insurmountable task to convince me that indeed there was a meaningful consultation between the parties, due to the fact that, from the contents of Annexure "JJ2" it does not appear that there was a meaningful consultation at all. For instance, the minutes of the meeting allegedly held on the 8<sup>th</sup> October, 2008, in part reads thus; "Mr Masina: I have noted with great concern that we spent more time talking about issues than doing the actual work. The little work that we have is never done in time because of all these problems. You guys do not do the work but at the end of month you expect to get paid, where do you think I will get the money from if you continue doing like this".

5.20 With regard to the allegation that the respondent was in financial constraints; reliance was placed on Annexure "JJ3". Annexure "JJ3" is the respondent's bank statements. Save to hand in this document, no further oral evidence was led by the respondent to demonstrate through Annexure "JJ3" that indeed the company was in financial crisis. I am unable to appreciate, by mere looking at Annexure "JJ3", that the respondent was in financial crisis and or that it was operating at a loss. In other words the respondent has not been able to show that the respondent was operating at a loss, and that it was justified to retrench the applicant (after all the alternative options to avert the retrenchment have been considered, but failed).

**-16-**

5.21 The respondent was supposed to file the financial statement, which would have shown the income earned vis-a-vis the company expenditure over a reasonable period; for example, six months and or more in order to determine whether or not the company was operating at a loss. In the instant case, the respondent filed or submitted Annexure "JJ3", being bank statements for October, November and December 2008. The respondent failed to substantiate its case and or to demonstrate through the bank statements that indeed the company was in dire financial difficulties and to prove that this necessitated the retrenchment or termination of the applicant's services on operational grounds.

5.22 The evidence led does not reveal that the respondent's director discussed the financial position of the company with his employees. The bank statements aforementioned were never presented to the employees for deliberation, wherein the employees would be able to make their input or contribution in a bid to avert or avoid the contemplated retrenchment.

5.23 On the other hand, the respondent on the 17<sup>th</sup> November, 2008, made the applicant to sign a one (1) month fixed-term contract, which was meant to run from the date of signature (17<sup>th</sup> November) to 17<sup>th</sup> December, 2008. RW1 testified that despite the wording of the contract, but this was a "performance contract". It is argued that the "performance contract", was introduced by the management to address the employees' poor work performance, poor time keeping (late coming to work) and absence from work without leave or authorization. RW1 stated that this was not meant to victimize the employees or to be used to get rid of 'unwanted' employees.

-17-

5.24 I fail to understand the rationale or purpose of the so called "performance contract". Infact, nowhere in the said "performance contract", is stated that this contract meant to improve or enhance the performance rate of the employees. Surprisingly, on the 5<sup>th</sup> December, 2008, the respondent served the applicant with the notice of retrenchment dated 5<sup>th</sup> December, 2008. The notice of retrenchment in part reads as follows: "Regrettably, we would like to inform you as we hereby do, that due to the financial situation the company is in we are finding it increasingly difficult to come up with the overheads: and as a result have resolved to effect retrenchments until the situation normalizes. You will therefore be serving the month of December as your notice period".

5.25 The notice of retrenchment does not manifest that there were previous consultations between the parties. In the notice, the respondent does not allude to the aforesaid meetings (Annexure "JJ2") allegedly held between the parties regarding the issue of the contemplated retrenchment.

## 6. CONCLUSION

6.1 In light of the foregoing analysis of the facts of this case; it is my conclusion that the respondent has failed to discharge the onus placed on it by section 42 of the Employment Act 1980 as amended. The respondent has failed to prove on the balance of probabilities that the termination of the applicant's services was warranted in terms of section 36 of the Employment Act 1980; and it has not been able to show that taking into account all the circumstances of the case, the termination of the applicant's services was the reasonable option.

-18-

6.2 In terms of section 40 (2) of the Employment Act 1980 as amended, where an employer contemplates terminating the services of five (5) or more employees due to redundancy, he shall give not less than one month notice in writing to the Labour Commissioner and to the organization (if any), and in the notice the reasons of the redundancy and the affected employees shall be disclosed. However the Industrial Court has since expounded our law in so far as individual consultation on the subject of retrenchment is concerned. In this regard, see the case" of Thabo Simelane v JD Group (Swaziland), Industrial Court case no: 166/02 and Lonhlanhla Masuku v KK Investments (Pty) Ltd, Industrial Court case no: 341/03.

6.3 In the aforementioned cases, the court laid down a legal requirement to the effect that where an employer contemplates the retrenchment of an individual employee; the employer is legally obliged to consult with the individual employee.

6.4 In the case of Johnson and Johnson (Pty) Ltd v Chemical Workers Industrial Union and Others (1999) 20 ILJ 89 (LAC), the Labour Appeal Court of South Africa stated that;

"The employer must initiate the consultation process when it contemplates dismissal for operational reasons. It must disclose the relevant information to the other consulting party; it must allow the other party an opportunity during consultation to make representations about any matter on which they are consulting; it must consider these representations and, if it does not agree with them, it must give reasons".



6.5 Van Jaarsveld and Van Eck in their book titled "principles of Labour Law", second Edition at page 225, state that; "substantive fairness with regard to

-19-

retrenchment means that a valid or bona fide and fair reason must exist for the termination of the employment of an employee on account of operational reasons".

6.6 In the case of Phylis Phumzile Ntshalintshali v Small Enterprise Development Company. Industrial Court case no. 88/2004 at pages 9-10 the court stated that; "An employer has the prerogative to structure its establishment and to determine the size and character of its workforce in the manner most suitable for its requirements. Where however a decision is made which results in the retrenchment of employees, the modern Law provides procedural and substantive safeguards to ensure that the decision is bona fide and implemented in a fair and objective manner after reasonable effort has been made to avert or minimize the loss of jobs. The decision to retrench must be reasonable, made in good faith and there must be a commercial rationale for the retrenchment".

6.7 After careful analysis of the foregoing evidence in this case, together with the above-cited authorities and cases herein; I have come to the conclusion that the applicant's retrenchment or termination of services was both procedurally and substantively unfair. The respondent has failed to prove that it consulted with the applicant prior to his retrenchment. The respondent's Director (RW1) merely alleged that the applicant was consulted, but there was no proof to that effect. The disputed minutes (Annexure "JJ2") have not be considered because of the reasons stated in my foregoing paragraphs. As I stated above, without the minutes of the alleged meetings the respondent's case falls away.

-20-

6.8 The applicant alleged that he was not informed about the reason of the termination of his services.

I accept his version, because apparently the respondent never disclosed to the applicant or to the other affected workers the reason for the contemplated retrenchment. It is also my finding that no reasonable effort was made by the respondent to avert or minimize the loss of jobs.

6.9 On the other hand, the respondent has failed to prove on the balance of probabilities that there was a Commercial rationale for the retrenchment. As I stated in my foregoing analysis, the respondent only submitted the bank statements, and it never demonstrated that the respondent company was operating at a loss and or that the staff reduction would lead to saving of costs or cutting of the loss.

6.10 I am now required to determine an appropriate remedy to be granted to the applicant. The applicant only prays for 12 months' wages for unfair dismissal and notice pay. With regard to notice pay, it is my finding that the applicant has not been able to prove that he is entitled to this claim. The applicant was notified on the 5<sup>th</sup> December, 2008 that his services would be terminated and that he would be serving the month of December as notice. The applicant has failed to show that this notice was not sufficient, hence the claim for notice pay.

6.11 With regard to compensation, it is my considered view that a compensation of 6 months' wages is a fair and equitable relief in the circumstances of the case. In arriving at this, I have taken into account the fact that the applicant had only been with the respondent for about 9 months. I have also considered the fact that he is young (29years) and he still have some good prospects of finding another

-21-

job. However, I have taken into account that the applicant is married with four (4) minor children, and there is no doubt that his family was adversely affected by the loss of his job.

## **7. AWARD**

7.1 Pursuant to the foregoing conclusion and findings herein; and having taken into account all the circumstances of the case I hereby make an award that the respondent shall pay the applicant 6 months' wages as compensation for unfair dismissal which is calculated as follows: E950-00 x 6 months = E5, 700-00

7.2 The respondent is ordered to pay the applicant the sum of E5, 700-00 (Five Thousand Seven Hundred Emalangeni) within 30 days from the date of receipt of this Award.

DATED AT MANZINI ON THIS 27<sup>th</sup> DAY OF OCTOBER, 2009

Robert S. Mhlanga

CMAC Commissioner