



## 1. **PARTIES AND REPRESENTATIONS**

The applicants' herein are Jabulani Nhleko. Mr. Duma Mncina, Mr. Mandla Thwala, Mr. Sikelela Dlamini, Mr. Billy Dlamini, Mr. Bheki Mkhonta, Mr. Joseph Zulu and Mr. Vusani Gumbi.

The Applicants are all Swazi male adults, who are the former employees of the Respondent. Their postal address is P.O. Box 3388, Mbabane.

The Respondent is Boy Dlamini, a Swazi male adult of P.O. Box A 320, Swazi Plaza Mbabane. Mr. Dlamini operates Ncane Construction, where the Applicants were employed.

The Applicants chose to represent themselves, but nominated Mr. Mandla Thwala to act as their spokesperson.

The Respondent was not represented at the arbitration proceedings.

## 2. **BACKGROUND INFORMATION.**

The dispute was scheduled for a pre-arbitration hearing on the 22<sup>nd</sup> of September, 2009. On this day the pre-arbitration had to be postponed as the Applicants were not present since they had not collected their invitation for this date. The

Respondent was present on this date, and stated that he would be engaging the services of an attorney.

The pre - arbitration was eventually held on the 9<sup>th</sup> of October, 2009, where all the parties were present and it was decided that the arbitration process would commence on the 17<sup>th</sup> of November, 2009 at 9:00 a.m. The Respondent informed the gathering that he had engaged the services of Mr. Mduduzi Mabila, a practicing attorney. The Respondent stated that Mr. Mabila would be present on the 17<sup>th</sup> of November, 2009 to represent him, and all parties signed an agreement to postpone the arbitration proceedings to this date.

On the 17<sup>th</sup> of November, 2009, neither the Respondent nor Mr. Mabila appeared at the arbitration hearing. Efforts to locate Mr. Dlamini proved futile as his mobile telephone was switched off. The proceedings were postponed once again to the 4<sup>th</sup> of December, 2009, to facilitate Mr. Dlamini's attendance, and a letter was written to him informing him that if he failed to appear on this date the hearing would proceed as an Exparte Application.

Despite all this, the Respondent once again failed to make an appearance on the appointed day, hence the matter was heard in his absence.

### **3. ISSUES IN DISPUTE**

According to the Certificate of Unresolved Dispute No. 378/09 on file, the nature of this dispute is one of Alleged Unfair Dismissal.

The following claims were listed:-

1. Notice pay
2. Leave pay
3. Underpayments
4. Public holidays
5. Compensation for unfair dismissal

### **4. SURVEY OF EVIDENCE**

Mr. Mandla Thwala testified on behalf of all the Applicants and also submitted a number of documents as part of his evidence.

Mr. Thwala stated that the Applicants had all been employed by Mr. Boy Dlamini to work in various positions at his construction company. The said company, designated as Ncane Construction. Mr. Thwala submitted a list which sets out the Applicants and their respective designations, dates of employment and their salaries at the time of dismissal.

According to Mr. Thwala they had all worked for Mr. Dlamini, whose construction company had been contracted to work on the construction of Emtini Hotel (formerly known as KaMgenule Hotel). According to the testimony of Mr. Thwala, Mr. Dlamini had been contracted to work at the said site in the year 2007.

The evidence of Mr. Thwala was that on the 2<sup>nd</sup> of April, 2009 Mr. Dlamini had sent his father and two of his sisters to the construction site, and these people had told them that they were only going to be paid half their monthly salaries, and that they were all no longer required to return to work as their services were being terminated. The evidence of Mr. Thwala was that Mr. Boy Dlamini virtually disappeared and never bothered to explain the situation to them, or tell them why they were being dismissed.

Mr. Thwala stated that all of them had been employed on a permanent basis, and had worked from Monday to Saturday in each week. He stated that they were all paid at a rate of E3.00 (three emalangeni) per hour, and had not been paid in accordance with the Wages Regulation Order pertaining to the Building and Construction Industry of 2008. He stated that none of them had ever been on leave, and neither were they paid any money in lieu of such leave. It was also Mr. Thwala contention that the Applicants had been dismissed

without proper notice, and in a manner which was substantively and procedurally unfair.

It was Mr. Thwala's prayer that the Applicants be awarded the claims as set out in the certificate of unresolved dispute, and the report of dispute.

## 6. **ANALYSIS OF EVIDENCE AND ARGUMENTS**

It is clear that the Applicants are employees to whom Section 35 of the Employment Act, 1980 applies, and by virtue of this section the Applicants receive protection.

In casu, it is clear that the Applicants were dismissed in circumstances that are not permitted by Section 36 of the said Act, and also that they were never subjected to a disciplinary proceedings before the said terminations took place. From the evidence of the Applicants, the employer simply dismissed them without telling them why they were being terminated from employment.

The Applicants were able to make out prima facie case of unfair dismissal both on a substantive and procedural level. Since there was no appearance on behalf of the Respondent, the Applicant's version of events stood uncontroverted. It is therefore my finding that the Applicants were dismissed in a substantively, and procedurally unfair manner.

## 7. CONCLUSION

The Applicants submitted as party of their evidence the Regulation of Wages (Building and Construction Industry) Order, 2008, which Order came into effect on the 1<sup>st</sup> of July, 2007.

They submitted that they were underpaid, and had not been paid for holidays worked and that they had also not been adequately compensated in terms of leave pay.

Mr. Jabulani Nhleko was engaged as a carpenter on the 3<sup>rd</sup> of June, 2008. He was paid a monthly sum of E730.00. According to the Wages Regulation he ought to have been remunerated at the rate of E5.47 per hour for every 8 hours day worked. IN view of this, he was clearly underpaid. The said Wages Order states in Section 6 that the employees were entitled to be paid full pay for all public holidays worked. It was the testimony of the employees that they worked on The Kings Birthday, Somhlolo day, Umhlanga day, Workers day, Goodfriday, Easter Monday and Incwala day.

Section 7 (1) of the said Order also states that on completion of three months of continuous employment, each worker shall be entitled to one day per month to a maximum of

thirteen days in a twelve month period. Mr. Nhleko was therefore entitled to 7 days paid leave.

Mr. Duma Mncina, was engaged on the 16<sup>th</sup> of January, 2008 as a Bricklayer, and earned a monthly salary of E1, 279.25. According to the Wages Regulation he was meant to be paid at the rate of E5.47 per hour. It is clear that this gentlemen not underpaid. Mr. Mncina also worked on the public holidays as aforementioned.

According to Section 7 (1) of the Order Mr. Mncina was entitled to 11 days paid leave.

Mr. Billy Dlamini was engaged on the 3<sup>rd</sup> of September 2008, as a General Labourer. He earned a sum of E519.48 (Five Hundred and Nineteen Emalangi Fourty Eight Cents) per month. According to the Wages Regulation he ought to have been paid at the rate of E5.31 (Five Emalangi Thirty One Cents) per hour. He also worked on public holidays. According to Section 7 (1) of the Order, Mr. Dlamini was entitled to 3 days paid leave.

Mr. Bheki Mkhonta was engaged on the 6<sup>th</sup> of July, 2008 as a General Labourer. He earned a sum of E519.48 (Five Hundred and Nineteen Emalangi Fourty Eight Cents) per month. According to the Wages Regulation, he ought to have



been paid at the rate of E5.31 per hour. He also worked on public holidays. According to Section 7 (1) of the Order, Mr. Mkhonta was entitled to 5 days paid leave.

Mr. Joseph Zulu was engaged on the 16<sup>th</sup> of May, 2008 as a General Labourer. He earned a monthly salary of E519.48. According to the Wages Regulation, he ought to have been paid at the rate of E5.31 per hour. He also worked on public holidays. According to Section 7(1) of the Order, Mr. Zulu was entitled to 7 days paid leave.

Mr. Vusani Gumbi was employed on the 14<sup>th</sup> of May, 2008 as a General Labourer. He earned a monthly sum of E519.48. According to the Wages Regulation, he ought to have been paid at the rate of E5.31 per hour. He also worked on public holidays. According to Section 7 (1) of the Order, Mr. Gumbi was entitled to 7 days paid leave.

Mr. Mandla Thwala was engaged as a General Labourer on the 3<sup>rd</sup> of January, 2007. He earned a monthly salary of E519.48. According to the Wages Regulation, he ought to have been paid at a rate of E5.31 per hour. He too worked on public holidays. According to Section 7 (1) Mr. Thwala was entitled to 12 days paid leave from April 2007 to March 2008. Section 7 (2) provides that Mr. Thwala is entitled to 11 days paid leave for 11 months and 2 days paid leave for the

12<sup>th</sup> month, after the first year of continuous employment. This means that Mr. Thwala was entitled to 15 days leave as from January 2008 to March 2009, (total number of days = 27 days paid leave).

Mr. Sikelela Dlamini was engaged on the 10<sup>th</sup> of October, 2007 as bricklayer. He earned a sum of E1,279.75 per month. He was according to the wages Regulation meant to at the rate of E5.47 per hour, he was therefore not underpaid. He also worked on public holidays. According to Section 7 (1) of the Order, he was entitled to 12 days paid leave from February, 2008 to January, 2009. He was entitled to an additional 2 days leave pay for the months of February and March, 2009 as per Section 7 (1) of the said Order. (Total Number of leave days = 14 days).

### **AWARD**

Having heard the evidence and arguments as presented by the Applicants the Respondent is hereby ordered to pay the following amounts:-

1. Jabulani Nhleko (Employed 03/06/08)
  - Notice pay = E1, 137.76
  - Leave pay (7 days x E43.76) = E306.32
  - Underpayments (E1137.76 - E730.00 = E407.76 x 10 month) = E4077.60.

- Public holidays (Somhlolo day, Incwala day, Goodfriday Kings Birthday and Easter Monday (2009) = E43.76 x 5 days = E262.56
- Compensation for unfair dismissal (E1137.76x1 month) = E1137.76.

Total amount due = E6922.00.

2. Mr. Duma Mncina (16/01/08)

- Notice pay = E1, 279.25
- Public holidays (Goodfriday, Easter Monday, Somhlolo day, Kings Birthday, Workers day, Umhlanga day and, Incwala day (2008) = E49.20 x 10 days = 492.00
- Compensation for unfair dismissal (1279.25 x 1 month) = E1279.25.

Total due = E3, 591.70

3. Mr. Billy Dlamini (employed 03/09/08)

- Notice pay = E1,104.48
- Leave pay (3days x E42.48) = E127.44
- Underpayments (E1104.48-E519.48 = E585.00 x 7 months) = E4095.00
- Public holidays (Somhlolo day, Incwala day (2008), Goodfriday, Kings Birthday and Easter Monday (2009) = E42.48 x 5 days) = E47.48.

- Compensation for unfair dismissal ( $E1104.48 \times 1$  month) = E1104.48

Total due = E6 478.88.

4. Mr. Bheki Mkhonta (Employed 06/07/08)

- Notice pay = E1104.48
- Leave pay (5 days  $\times$  E42.48) = E212.40
- Underpayments ( $E1104.48 - E519.48 = E585.00 \times 9$  months) = E5 265.00
- Public holidays (Somhlolo day, Incwala day, Umhlanga day (2008), Kings birthday, Goodfriday and Easter Monday (2009) =  $E42.48 \times 6$  days) = E254.88.
- Compensation for unfair dismissal ( $E1104.48 \times 1$  month) = E1104.48

Total due = E7, 941.24

5. Mr. Joseph Zulu (employed 16/05/08)

- Notice pay = E1104.48
- Leave pay (7 days  $\times$  E42.48) = E297.36
- Underpayments ( $E1104.48 - E519.48 = E585.00 \times 11$  months) = E6435.00

- Public holidays (Umhlanga day, Somhlolo day, Incwala day (2006) and Kings Birthday, Goodfriday and Easter Monday (2009)=E42.48 x 6 days = E254.88
- Compensation for unfair dismissal = E1104.48 x 1 month) = E1104.48

Total due = E9, 196.20

6. Mr. Vusani Gumbi (employed 14/03/08)

- Notice pay = E1104.48
- Leave pay (7 days x E42.48) = E297.36
- Underpayments (1104.48 - E519.48 = E585.00

**THUS DONE AND SIGNED AT MBABANE ON THIS  
.....DAY OF OCTOBER, 2009.**

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**KHONTAPHI MANZINI  
CMAC ARBITRATOR**