



**CONCILIATION, MEDIATION & ARBITRATION COMMISSION
(CMAC)**

HELD AT MBABANE
03/2010

SWMZ

In the matter between:-

SIMILO SHONGWE

APPLICANT

And

COMPUTER CORPORATION

RESPONDENT

CORAM:

Arbitrator : Knowledge Lwazi. Manana

For Applicant : No Appearance

For Respondent : Mr. Ncengimpilo Hlophe

DEFAULT ARBITRATION AWARD

1. PARTIES AND REPRESENTATION

The Applicant herein is **Similo S. Shongwe**, an adult Swazi male of P.O. Box 1152 Matsapha, in the Manzini Region.

The Respondent is **Computer Corporation**, a body corporate whose postal address is P.O. Box 3373, having its registered offices within the City of Manzini in the Manzini Region.

The Respondent was represented in these proceedings by **Mr. Ncengimpilo P. Hlophe** one of its directors. There was no appearance on behalf of the Applicant.

2. BACKGROUND OF THE DISPUTE

Sometime in April 2009 the Applicant was employed by the Respondent as a computer technician. He was earning a monthly salary E1000 each month. The Applicant remained in the continuous employ of the Respondent until the 1st of December 2009, when his services were terminated following allegations and or accusations of absenteeism.

The Applicant viewed such conduct by the Respondent to be unfair and accordingly reported a dispute for unfair dismissal with the Commission.

The Applicant's dispute was duly conciliated upon but could not be resolved. A certificate of unresolved dispute was issued.

By agreement between the parties, the matter was then referred to arbitration for determination, hence these proceedings.

3. SUMMATION OF EVENTS

On the 05th May 2010, a pre-arbitration meeting was held at the **CMAC Offices, Fourth Floor, SNAT Building, Manzini**. Only the Applicant attended, the Respondent did not.

There were no reasons given to justify the Respondent's failure to attend despite having been properly invited.

The matter was then scheduled for arbitration on the 15th July 2010. This was accordingly brought to the attention of the Respondent.

On this date, only the Respondent attended arbitration. The Applicant did not. There was no explanation proffered to justify the non attendance on the part of the Applicant.

The matter was then postponed to the 03rd August 2010. The Applicant was called upon to report to the CMAC offices to collect his invitation. He did not respond immediately but eventually showed up and collected his invitation on the 29th July 2010.

When the matter was called on the 3rd August 2010, the Applicant was, once again not in attendance. This was for the second time in succession.

It was on this date when the Respondent moved that the dispute be dismissed on the strength of **CMAC Rule 27**. The thrust of his application was that on both occasions, the Applicant did not only fail to attend, he also did not proffer any explanation for his failure to attend arbitration despite having been properly invited.

It was also the Respondent's averment that he had gathered, reliably so, that the Applicant had, on the advice of his father, indicated his intention to abandon the dispute on the strength of some agreements made by the Applicant's father and the Directors of the Respondent. These agreements were, according to the Respondent, said to have been made when the Applicant

was employed or taken aboard as the case may be by the company.

4. **Analysis**

The facts of this matter are such that the Applicant despite being fully aware of the proceedings, and having been the one who initiated same, decided to unilaterally put himself beyond the reach of the Commission.

In my view, this conduct, on the part of the Applicant, amounted to an unequivocal abandonment of his case.

His actions as aforestated seem to lend credibility to the Respondent's Director's averment that the Applicant had indicated an intention to abandon his claim against the company. All pointers in this matter seem to unanimously and consistently point towards an absolute lack of interest on the part of the Applicant to pursue the dispute to finality.

Whilst the Commission can not be seen to rigidly compel parties to pursue their cases to finality despite other emerging developments, the lack of candor on the part of the Applicant to alert the Commission officially of his decision to abandon the dispute was unfortunate and regrettable.

In light of the events as spelt out above, I am left without an option, but to dismiss this dispute as per the Respondent's prayers.

4. **AWARD**

The Applicant's dispute is hereby dismissed in its entirety.

**SIGNED AT MANZINI ON THIS DAY OF SEPTEMBER,
2010.**

**KNOWLEDGE MANANA
CMAC ARBITRATOR**