

CONCILIATION, MEDIATION & ARBITRATION COMMISSION (CMAC)

HELD AT MANZINI SWMZ 108/09

In the matter between:-

PHILLIP M. MKHONTA APPLICANT

And

JACOBUS H. SAAYMAN RESPONDENT

CORAM:

Arbitrator . : K. Manzini
For Applicant : Mr. P. Mkhonta
For Respondent : Mr. D. Jele

ARBITRATION AWARD

1. PARTIES AND HEARING

The Applicant herein is Mr. Phillip M. Mkhonta, a Swazi male adult of P.O. Box 308, Manzini. The Respondent is Jacobus H. Saayman, a male adult of P.O. Box 308, Malkerns.

The Applicant represented himself in these proceedings, whilst the Respondent was represented by Mr. D. Jele, an attorney from the Robison Bertram Firm of Attorneys.

2. PRELIMINARY ISSUES

The Respondent's representative placed it on the record that contrary to what was stated in all the previous correspondence, and documentation herein, the Respondent's name is not Simon Kuss.

Mr. Jele stated on a point of clarity that his client's name was mis-spelt, and really ought to be spelt as Jacobus H. Saayman.

3. ISSUES IN DISPUTE

According to the Certificate of Unresolved Dispute filed herein (No. 501/09), the dispute between the parties revolves around the fact that the Applicant had been employed by the Respondent in 2004, and had until 2009, not been confirmed as a permanent employee.

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MR. MKHONTA'S STATEMENT

According to the Applicant he had been employed in the year 2004, as a gardener, and had earned a sum of E30.00 per day. He stated that he had been dissatisfied by the fact that up until the year 2009, he had not been confirmed as a permanent employee.

He stated that however, the reason he had lodged the dispute had been overtaken by events as his employer had since engaged him as an employee, employed on a fixed term contract. He stated that the agreement had been duly signed, and was a reflection of the employment relationship between him and the Respondent.

MR. P. JELE'S STATEMENT

Mr. Jele stated that the Applicant had sought to be employed on a contract basis, and the Respondent had duly done this. Mr. Jele handed in a copy of the said contract, which was duly signed by both parties. Mr. Jele did however state that the Applicant had since breached the contract, and had been

dismissed by the Respondent. He stated that this dismissal is currently the basis of another dispute that is pending before the Commission, but stated that the present dispute had since been resolved.

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4. ANAYLSIS OF ARGUMENTS AND EVIDENCE

From the statements given by both parties, it is evidence that the bone of contention herein was that Mr. Mkhonta was desirous of being engaged on a contract basis, and no longer as a casual employee.

In view of the fact that the parties have subsequently signed a contract of employment is conclusive of this dispute having been settled.

The fact that the parties are presently engaged in another dispute which revolves around Mr. Mkhonta's dismissal from employment, is outside the scope of this dispute, and shall not be made an issue herein.

5. AWARD

Having heard the statements of both parties and having perused the contract of employment, which is an embodiment of the parties' agreement. It is evident that this dispute between the parties no longer, exists. This matter is therefore dismissed in its entirety. The said contract is annexed hereto for ease of reference.

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THUS DONE AND SIGNED AT MBABANE ON THIS 8th DAY OF FEBRUARY, 2010.

KHONTAPHI MANZINI

CMAC ARBITRATOR

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