



**CONCILIATION                      MEDIATION                      AND  
ARBITRATION                      COMMISSION**

**HELD AT MBABANE  
374/12**

**REF      NO:      SWMB**

In the matter between:

**HAPPY JOYCE ZWANE**

**APPLICANT**

**AND**

**CAPACITY BUILDING PROGRAMME      RESPONDENT**

**Coram**

**ARBITRATOR                      :**                      **VELAPHI Z. DLAMINI**

**FOR APPLICANT                      :**                      **MUSA SHONGWE**

**FOR RESPONDENT                      :**                      **WENDY NDLELA**

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**ARBITRATION AWARD**

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## **1. DETAILS OF HEARING AND PARTIES**

- 1.1 The arbitration hearing was held between the 16<sup>th</sup> June, 2014 and 7<sup>th</sup> October, 2014 at the offices of the Conciliation, Mediation and Arbitration Commission (CMAC) at the first floor Asakhe House in Mbabane.
- 1.2 The Applicant is Happy Joyce Zwane, an adult Swazi female of Mbabane in the Hhohho region. The Applicant was represented by Mr. Musa Shongwe from Makhosi C. Vilakati Attorneys based in Mbabane.
- 1.3 The Respondent is Capacity Building Programme, a project funded by the European Union under the National Authorising Officer-Aid Co-ordination Management Section of the Ministry of Economic Planning and Development based in Mbabane. The Respondent was represented by Ms. Wendy Ndlela from the Attorney General's Chambers.

## **2. ISSUE TO BE DECIDED**

The issue for determination is whether or not the Applicant is entitled to payment of gratuity as claimed.

## **3. BACKGROUND FACTS**

- 3.1 The Applicant was employed by the Respondent on the 1<sup>st</sup> May 2011 as an Accountant. The employment was for a fixed term of eleven (11) months and was to expire on the 31<sup>st</sup> March 2012. However the Applicant resigned on her own accord on the 6<sup>th</sup> February 2012, a month before the expiry of her contract. In her letter of resignation, the Applicant requested payment of gratuity, but the Respondent did not

accede to her request on the basis that she had not completed her contract.

- 3.2 The Applicant reported a dispute for non-payment of gratuity to the Commission. Despite conciliation, by CMAC, the dispute remained unresolved and a Certificate of Unresolved Dispute no. 626/12 was issued. The parties referred the dispute to arbitration for determination and I was appointed to decide same.
- 3.3 The Applicant is claiming payment of ten (10) months gratuity in the sum of E51 732.50. The Respondent opposes the claim.

#### **4. SURVEY OF EVIDENCE AND ARGUMENTS**

- 4.1 Only the Applicant gave evidence in support of her case. The Respondent led the evidence of Mavie Thwala, the Imprest Administrator, to substantiate its case.
- 4.2 All the facts of his case are common cause, the dispute stems from the interpretation of specific clauses in the contract regarding the payment of gratuity.
- 4.3 The Applicant concedes that she left her employment with Respondent on her own accord before the contract expired, however she contends that the terms and conditions of the contract provide that she should be paid pro rata gratuity.
- 4.4 It is also contended by the Applicant that there is a conflict between clause 7 of the Contract Agreement document and clauses 5.3, 7.1 and 7.2 of the Terms and Conditions of Employment instrument. Whereas clause 7 of the Contract Agreement and clause 5.3 of

the Terms and Conditions of Employment state that, an employee who leaves employment on his/her own accord will not be entitled to gratuity, clauses 7.1 and 7.2 of the Terms and Conditions of Employment provide otherwise, so went her argument.

- 4.5 The Applicant testified that it was on that basis that she demanded payment of gratuity from the Respondent even though she resigned before the expiry of the contract. According to her, clauses 7.1 and 7.2 of the Terms and Conditions of Employment provided that if she terminates employment before the end of the programme estimate, she would be entitled to any outstanding gratuity.
- 4.6 It was the Applicant's argument that the term 'outstanding' which appears in the Terms and Conditions of Employment at clause 7.1 means, 'amount due' and in which case her gratuity fell due upon her termination of the contract.
- 4.7 It was the Applicant's evidence that she sought the assistance of the Commissioner of Labour and in particular she consulted with Mr. Mduduzi Hlophe, the legal adviser, who fortified her stance that she was entitled to gratuity. In spite of forwarding Mr. Mduduzi Hlophe's opinion to the Respondent, the latter persisted with its refusal to pay her gratuity.
- 4.8 Under cross-examination, the Applicant maintained her position. She also denied that she approached the Commissioner of Labour because she was not convinced that she was entitled to gratuity at the first instance.
- 4.9 On the other hand the Respondent's witness Mavie Thwala testified that he was Head of the programme. He stated that when the Applicant demanded gratuity after she had resigned, the Respondent's position was

that she was not entitled to the claim because she had not completed the contract.

- 4.10 According to Mavie Thwala, gratuity was paid to an employee by the employer as an incentive to that employee for having worked satisfactorily for the entire term of the contract. It was his evidence that there was a difference between a salary and gratuity and such was applied and reflected in the Contract Agreement and the Terms and Conditions of Employment documents.
- 4.11 It was the Imprest Administrator's evidence that the term 'outstanding' meant 'amount due' and in his understanding, gratuity was due at the end of the programme estimate.
- 4.12 Under cross-examination, Mavie Thwala maintained his stance and also denied that there was a conflict between the clauses of the Contract Agreement and the Terms and Conditions of Employment.
- 4.13 The Imprest Administrator conceded that even though the contract was clear that gratuity would be paid after the expiry of the programme estimate, if the termination of the contract was at the instance of the Respondent for a reason other than misconduct, the Respondent would have to pay gratuity.
- 4.14 Mr. Musa Shongwe argued that the Imprest Administrator's evidence was his opinion on the interpretation of the contract and since he was not a legal expert, his evidence should be rejected. The Applicant's counsel referred to the learned authors **Hoffman and Zeffert The South African Law of Evidence (4<sup>th</sup> ed)** chapter 4 page 4 as authority for his proposition. It was Mr. Shongwe's contention that

the opinion of the Commissioner of Labour's (Mr. Mduduzi Hlophe), as the office that has a statutory mandate to *inter alia* conciliate disputes between employers and employees, carries more weight than that of Mr. Thwala.

4.15 It was Mr. Shongwe's argument that the principles that govern the interpretation of commercial contracts apply to the interpretation of employment contracts. According to the Applicant's counsel, on a reading of clauses 7.1 and 7.2 of the Terms and Conditions of Employment, the Applicant is entitled to gratuity. He submitted that the clause only excluded those employees who are dismissed for serious misconduct.

4.16 The Applicant's attorney submitted that Mr. Mavie Thwala's version that the word 'outstanding' should be interpreted to mean monies due at the end of the programme estimate, was far-fetched and spurious given that the very same clause 7.1 of the Terms and Conditions of Employment provide that, either party may terminate the contract of employment before the end of the programme estimate and upon such termination the employee is entitled to gratuity. According to the Applicant's counsel, one therefore cannot terminate the contract at the end of the programme estimate.

4.17 Mr. Shongwe submitted that Mr. Thwala's interpretation would lead to an absurdity because on the application of the 'golden rule' of interpretation, that the language in a document should be given its grammatical and ordinary meaning unless that would lead to some absurdity or some repugnancy, clauses 7.1 and 7.2 of the Terms and Conditions of Employment meant that, the Applicant was entitled to gratuity upon the deliberate termination of the

contract before the end of the programme estimate. The Applicant's counsel quoted the dicta of the learned **Jourbert JA** in the case of **Coopers and Lybrand v Bryant 1995(3) SA 761 (A) at 767 E-768 E**.

4.18 It was Mr. Shongwe's contention that, it was unreasonable and unfair to assert that the intention of the parties, when they entered into the contract was that gratuity would only be paid to employees who had completed the programme estimate.

4.19 According to the Applicant's counsel only employees who had not completed probation or those whose services were terminated for serious misconduct or unsatisfactory performance were specifically excluded by the contract. Since the category of employees who resigned was not specifically mentioned as prohibited from receiving gratuity, then, this meant that they were entitled thereto.

4.20 Mr. Shongwe submitted that the concession that Mr. Thwala made that, if the termination of the employee is not attributable to her even though it happens before the end of the programme estimate, the Respondent would pay her gratuity, meant that the Respondent was blowing hot and cold at the same time. This cannot be permitted in law so went the argument.

4.21 According to Mr. Shongwe since the Applicant had diligently and honestly served the Respondent for (10) months and six (6) days, it was an unfair labour practice to deny her the pro rata gratuity as claimed.

4.22 Finally the Applicant's attorney submitted that since there was a conflict between clauses 5.3, 7.1 and 7.2 of the Terms and Conditions of Employment, The

*contra proferem* rule should apply, that is to say if an insertion is made in a document at the instance of one party, that insertion will, if ambiguous, be interpreted against the party who was responsible for the insertion. He referred to the following cases:

**Fedger Insurance Ltd v Leyds 1995 (3) SA 33(A); Mdoli Dlamini and Others v The Ministry of Public Works and Transport and Others HC 3009/10.**

4.23 The Respondent's attorney submitted that the contract of employment signed by the parties was clear as a bell regarding payment of gratuity. According to Ms. Ndlela, the parties bound themselves to the clear terms of the contract. She referred to the case of **Derek Charles Macmillan and Another v Usuthu Pulp Company t/a Sappi Usuthu, IC case no. 187/2006** at 19 para 55.

4.24 It was the Respondent's counsel's argument that the ordinary dictionary meaning of the term 'gratuity' was 'money given to the employee upon the completion of the period of service as a token of appreciation for having worked to the end of the contract'. She further quoted from the judgment in the case of **The Trustees of Swaziland Railway Gratuity Scheme v Swaziland Transport and Allied Workers Union Appeal case no. 1442/1993**, which stated that, gratuities are provided as a condition of employment to employees as an incentive to them to give long service to the employer.

4.25 Ms. Ndlela contended that the Swaziland Railway case (supra) was authority for this case because gratuity



was also payable at the end of the programme estimate.

4.26 It was the Respondent's attorney's submission that in this case gratuity was a contractual obligation couched clearly in clause 5.3 of the Terms and Conditions of Employment. According to Ms. Ndlela the clause was clear and unambiguous.

4.27 The Respondent's counsel argued that the Applicant's suggestion that gratuity is earned per month was against the parole evidence rule. She submitted that the parties had agreed to embody the terms and conditions of the agreement in a single memorial. None of the parties was therefore entitled to lead evidence to prove anything contrary to the express terms of the agreement. Ms. Ndlela referred to the cases of **Meshack LaNgwenya v Swazi Poultry Processors High Court Civil case no. 737/2009; Edward J. Kunene v Swaziland Railway (IC case no. 398/2004)**.

4.28 It was the Respondent's counsel's submission that there is no provision in the contract that gratuity is to be calculated monthly.

4.29 Ms. Ndlela argued that in terms of the contract, three classes of persons were not entitled to gratuity; These were; an employee who leaves employment under the programme of his/her own accord; an employee whose employment was terminated while still on probation and an employee whose contract was terminated due to disciplinary measures.

4.30 The Respondent's attorney contended that the term 'outstanding' in clause 7.2 of the Terms and Conditions of Employment is a qualifying word. According to her, gratuity was outstanding only at the

end of the programme estimate. Ms. Ndlela argued that if the Applicant was entitled to some money, it would have to be in another form but not gratuity, as the condition upon when one is to receive it were clearly specified in the contract.

4.31 Ms. Ndlela finally submitted that, there was no contradiction or confusion in the provisions of the contract and any confusion attributable to the contract was self-created by the Applicant. She argued that, with respect, the analogy by the Commissioner of Labour was incorrect.

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

5.1 At the outset I want to express my gratitude to both counsel for the able and persuasive arguments that they made and for the legal authorities I was referred to.

5.2 This dispute is vexed with the question of interpretation of the provisions of the contract of employment encapsulated in two documents entitled, 'Contract Agreement' and 'Terms and Conditions of Employment'. In particular it behoves me to determine whether or not in terms of these instruments, an employee is entitled to gratuity if she leaves employment on her own accord before the end of the programme estimate.

5.3 In the case of **Stuart Banks v Imphilo Clinic (Pty)Ltd and Others (IC case no.528/2007)** at 7 paras: 11-12 the Court observed as follows:

***“The matter calls for an interpretation of the Appendix and in particular the word ‘profit’. The Applicant says ‘profit’ includes***

***both operating profit and the profit ('surplus') on disposal of capital assets. Whilst the 1<sup>st</sup> Respondent says 'profit' refers only to operating profit.***

***The common intention of the parties must be ascertained first and foremost from the language used in the Addendum. According to the 'golden rule' of interpretation the language in the document is to be given its grammatical and ordinary meaning, unless this would result in some absurdity or be inconsistent with the rest of the document.***

***R.H. Christie: The law of Contract in SA (4<sup>th</sup> ed) 235-6".***

- 5.4 The Court in the **Stuart Banks case (supra)** at 8 paras: 14 - 15 went on to comment thus:

***"Since 'profit' in its literal meaning may refer to profit generally or one of the two specific kinds of profit referred to above, the Court must have regard to the context in which the word is used in relation to the contract as a whole, including the nature and purpose of the contract. The mode of construction should never be to interpret a particular word or phrase in isolation (in vacuo) by itself.***

***Swart and Another v Cape Fabric (Pty) Ltd 1979(I) SA 195 (A) at 202c.***

***Coopers and Lybrand and Others v Bryant 1995 (3) SA 761 (A) at 767.***

***The Court will also have regard to the background circumstances, namely the circumstances which existed when the contract was entered into, and the matters probably present in the minds of the parties when they contracted.***

***Coopers and Lybrand (supra) at 768”.***

- 5.5 The controversial provisions of the Contract Agreement and clauses 5.3, 7.1 and 7.2 of the Terms and Conditions of Employment are reproduced below. Clause 7 of the Contract Agreement reads thus:

***“7 TERMINAL BENEFITS/GRATUITY***

***At the end of this programme estimate (31<sup>st</sup> March, 2012), the employee will be entitled to a gratuity of 25% of the overall basic salary received”.*** (Underlining added).

- 5.6 Clause 5.3 of the Terms and Conditions of Employment provides the following:

***“5.3 Gratuity***

***An employee will receive gratuity of 25% of the basic annual salary at the end of each programme estimate. If the employee leaves employment under the programme of his/her own accord she/he will not be entitled to gratuity. Employees who whose (sic) employment is terminated while still on probationary period do not qualify for payment of gratuity, nor someone whose***

***contract is terminated due to disciplinary measures or unsatisfactory performance”***.  
(Underlining added).

- 5.7 Clauses 7.1 and 7.2 of the Terms and Conditions of Employment states that:

**“7 TERMINATION OF EMPLOYMENT**

***7.1 Termination of employment means the deliberate termination of a contract by either party for whatever reason prior to the contract’s expiry date. Except in the case of dismissal for serious misconduct, the services of a contract employee may be terminated by either side giving one month’s notice or paying one month’s salary in lieu of notice for grades (1) to (111) while employee of grade (1V) and below will be required to give 14 days’ notice or 14 days’ pay in lieu of notice.***

***7.2 Except in the case of dismissal for serious misconduct, on termination of a contract the employee will be entitled to any outstanding salary and gratuities, less any outstanding loans which will be deducted from monies due at source”***. (Underlining added).

- 5.8 The genesis of the controversy is the nomenclature in clauses 7.1 and 7.2 of the Terms and Conditions of Employment. The phrase ‘termination of employment’ in the contract of employment refers to a wilful ceasation of the contract at the instance of either party for whatever reason before its expiry date.

- 5.9 In terms of clause 7.2, when this contract is cut short by either party, the employee will be entitled to any outstanding gratuities, except if the termination was at the instance of the employer on account of the employee's misconduct.
- 5.10 Now if the employee is only entitled to gratuity upon completion of the full term of the programme estimate as per clauses 7 and 5.3 (supra), are these clauses not in conflict with clauses 7.1 and 7.2? Put differently, how can an employee be entitled to gratuity when she has prematurely severed ties? Yet another poser is, how can gratuity be outstanding for an employee who has not finished her term?
- 5.11 The Concise Oxford English Dictionary (11<sup>th</sup> ed) defines the adjective '**outstanding**' as "**1 exceptionally good. 2. Clearly noticeable. 3. Not yet done or paid**".
- 5.12 The Oxford School Thesaurus (2<sup>nd</sup> ed) states that the synonyms of the adjective '**outstanding**' are "**unresolved, unsettled, remaining, pending**".
- 5.13 Black's Law Dictionary (8<sup>th</sup> ed) defines the adjective '**outstanding**' as "**1 unpaid; uncollected<outstanding debts>**".
- 5.14 If the contextual grammatical and literal meaning of the adjective 'outstanding' is monies not yet paid or settled or still pending, in the context of this case, when can it be said that gratuity is still owing or not yet paid or due?
- 5.15 The literal meaning of the term 'outstanding' on its own cannot resolve the conundrum. This calls for an examination of the common intention of the parties

and in this regard, the background circumstances that existed at the time the parties entered into the contract, including the nature and purpose of the contract.

5.16 The Concise Oxford English Dictionary (supra) defines the term **'gratuity'** as, **'a sum of money paid to an employee at the end of a period of employment'**.

5.17 In the case of **Michael T. Mngadi v The Board of Trustees of the Motor Vehicle Accidents Fund's Pension Fund and Others (IC case no. 343/08)** at 7 para: 25 the Court observed as follows:

***"The Respondent's counsel submits that a retirement benefit is not a right, it is an incentive and a reward for good performance. We reject this submission. In the United Kingdom, pension benefits have long been recognized as remuneration, or part of the quid pro quo, in the employment relationship. The South African Courts affirmed the position that pension benefits are part and parcel of the costs of employing labour, and part of the remuneration which labour receives for services rendered. They form an integral part of the industrial relations bargain.***

***See Damant and Jithoo: The Pension Promise Pension Benefits and the Employment contract (2003) 24 ILJ 1 and the cases there cited Adjudicator and Others (2002) 21 ILJ 1947 the Court accepted that pension rights amount to***

**deferred pay rather than gratuities bestowed within the benevolence of the employer**". (Underlining added).

- 5.18 It may well be that the meaning of the term 'gratuity' in the **Swaziland Railway** case (supra) was found to be '**... an incentive to the employee to give long service to the employer**', however the Court arrived at this conclusion having examined the rules of the scheme.
- 5.19 The background circumstances that prevailed at the time of the conclusion of the contract informs the nature and purpose of the contract. I hold that there is no need for extrinsic evidence to ascertain the facts, they are all embodied in the two documents.
- 5.20 The General Clause (1) of the Terms and Conditions of Employment provides that, they apply to all external contracted personnel. These employees are employed on fixed terms for specific projects which are funded by the European Union and these are referred to as programme estimates. *Ex facie* the Terms and Condition of Employment this instrument came into effect on the 15<sup>th</sup> October, 2009.
- 5.21 According to clause 2 (Hiring Procedures), upon joining the unit, each employee will be invited to sign an annual renewable employment contract, which is effective at the time of beginning employment with the National Authorising Officer/AID Co-ordination Management Section (NAO/ACMs) controlled by the Ministry of Economic Planning and Development (MEPD). The duration of the contract will be in line with the provisions of the programme estimate.
- 5.22 The Terms and Conditions of Employment were not created for the Applicant only, they also apply to



other employees. She happened to be part of a group of externally contracted staff who are referred to in the document. Clause 5.1,1 states that, personnel has been grouped into grades (1) to (V). Grade (1) perform Administrative, Advisory and Supervisory work. Grade (11) are Executive posts. Grade (111) are Senior Clerical staff. Grade (1V) are Secretarial staff and lastly Grade (V) are those who do skilled manual work.

5.23 These Terms and Conditions of Employment pre-date the Applicant's contract, which came into operation on the 1<sup>st</sup> May, 2011, some nineteen (19) months after the Terms and Conditions came into effect. However like other employees in the listed categories, the Terms and Conditions of employee were incorporated into her contract.

5.24 A reading of several clauses demonstrates plainly that the Terms and Conditions of Employment were not fashioned exclusively for the duration of the Applicant's programme estimate.

5.25 Clause 4.1.1 for example states that, the annual leave period runs within the contract period in line with the Programme Estimate. Leave must be taken in the year in which it is earned and may not be carried forward, however due to exceptional circumstances, if the employee has not taken her leave because of work commitment, she may carry forward only 5 leave days to the following year.

5.26 It should be recalled that the Terms and Conditions of Employment provide for an annual renewable contract for the employees. Clearly clause 4.1.1 above envisages circumstances where the employee's contract has been renewed. However in

terms of clause 7.3, the yearly contract may not be renewed.

- 5.27 Clause 4.2.3 on sick leave provides that, after completing 12 months' continuous service an employee shall be entitled to 1 month sick leave on full pay and an additional 1 month sick leave on half pay.
- 5.28 On maternity leave, clause 4.3.4 states that it will be granted once in 3 years and only a maximum of two confinements is permitted. If maternity leave is taken earlier than the 3 years interval, the employee will be forced to take unpaid leave.
- 5.29 Having carefully read the entire contract *viz*, Contract Agreement and Terms and Conditions of Employment, I hold that clauses 7.1 and 7.2 should not be interpreted in isolation, but with the understanding that the Terms and Conditions of Employment were created for many externally contracted employees with various and distinct personal circumstances, including the Applicant herself, who were engaged on fixed term contracts.
- 5.30 It is likely that at the commencement of the Applicant's contract some externally contracted employees may have been in service for two years (programme estimates). This is a factual presumption based on the provisions of the Terms and Conditions of Employment document.
- 5.31 The Applicant did not allege that she was in her second term (programme estimate), nor does she base her claim on that. Her claim was based on the contract she did not complete.

- 5.32 I find that the use of the phrase **‘any outstanding gratuities’** in clause 7.2 resonates with the background circumstances and purpose and intention, I have ascribed to the Terms and Conditions of Employment. I hold that Clause 7.2 read together with clause 7 of the Contract of Agreement and clause 5.3 of the Terms and Conditions document refer to gratuities which fell due at the end of a programme estimate, but have not been paid. The above clauses may have applied to other externally contracted employees in grades (1) and (1V), but not to the Applicant.
- 5.33 The use of a plural **‘gratuities’** in the same sentence with **‘any outstanding’**, clearly shows that such benefit may have been due over a period of time, but because of the fact that the employee’s contract has been renewed for example, the employer may not have deemed it fit to pay the gratuity timeously or within a reasonable time after the end of a programme estimate.
- 5.34 The logic is simply that, when either party has deliberately terminated the contract signifying that she/he or it no longer wants to be bound to the other party in the future, under these circumstances the employer has no reason to withhold outstanding gratuities that were not paid on due date, which in this case was at the end of the programme estimate.
- 5.35 If the parties had agreed to pay gratuity even upon termination of the contract, clause 7.2 would have read **“Except in the case of dismissal for serious misconduct on termination of a contract the employee will be entitled to gratuity, less any outstanding loans”..**

5.36 It is also significant that in terms of clause 7 of the Contract Agreement gratuity will be calculated at 25% of the '**overall basic salary received**'. Clause 5.3 of the Terms and Conditions of Employment also states that gratuity will be 25% of the 'basic annual salary at the end of each programme estimate'.

5.37 Evidently the parties agreed on a formula for calculating the gratuity basing it on the total basic salary for the programme estimate. There is no clause that provides payment for pro rata gratuities. **The *expressio unius est exclusio alterius*** applies. That is to say, the expression of one thing is the exclusion of the other.

5.38 I find that the provisions of clause 7.2 thereof does not apply to the peculiar circumstances of the Applicant, but may be operational to another employee who has served more than one programme estimate.

5.39 An analogy may be drawn of a Collective Agreement. It may cover all the employees within a bargaining unit, but not all terms and conditions thereof apply to all the employees across the board, simply because employees have different circumstances.

5.40 I therefore find that there is no inherent conflict between clause 7 of the Contract Agreement and clauses 5.3, 7.1 and 7.2 of the Terms and Conditions of Employment. The parol evidence rule applies *in casu* and the *contra proferem* rule does not.

5.41 The parties elected that their agreement expressed in plain language be embodied in a written document. No illegality was pleaded by the Applicant, it is not for me to import a meaning that was never intended by the parties. I am persuaded that if the parties were

asked at the conclusion of their agreement, if gratuity would be paid on a pro rata basis, they would have replied, **'of course not'**.

5.42 The argument by Mr. Shongwe that Mr. Thwala is not qualified to give an opinion on the terms of the contract has no substance. This submission is a double edged sword, because the same may be propounded about the Applicant, who ventured her opinion on the meaning of the controversial clauses. The parties are deemed to have read and reflected on the terms before signing. They are deemed to have a better understanding of the contract of employment.

5.43 I therefore also find that having resigned on her own accord, before the end of the programme estimate, which was eleven (11) months, the Applicant is not entitled to any gratuity, consequently her claim falls to be dismissed in its entirety.

5.44 The following order is made:

## **6. AWARD**

6.1 I find that the Applicant is not entitled to any gratuity, having left employment before the end of the programme estimate.

6.2 The Applicant's claim for payment of the sum of **E51 732.50** as gratuity for ten (10) months is dismissed.

8.4 There is no order for costs.

DATED AT MBABANE THIS \_\_\_\_ DAY OF NOVEMBER, 2014

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VELAPHI Z. DLAMINI  
CMAC ARBITRATOR