
1. Parties and Presentation

- 1.1 The Applicant herein is Ms. Zodwa Priscilla Mndzebele, an adult Liswati female whose postal address is P.O. Box 484, Ezulwini. Mr. Joshua Mndzebele, a Labour Consultant appeared on behalf of the Applicant in these proceedings.
- 1.2 The Respondent herein is Tee & Jay Woodworks, a business duly registered in terms of the law of Eswatini. The Respondent's principal place of business is situated in Ezulwini, within the Hhohho region. The Respondent's General Manager/ Human Resource Officer initially represented the Respondent in these proceedings. The Respondent later on appointed Mr. D. Hleta, an Attorney from the DEMHLETA LEGAL firm of Attorneys to prepare the closing submissions herein.

2. ISSUES IN DISPUTE

- 2.1 According to the Certificate of Unresolved dispute filed herein, this is a matter of alleged unfair dismissal. According to the Applicant she was dismissed in a manner that is automatically unfair. It is her case that her dismissal was procedurally and substantively unfair.
- 2.2 The Respondent, on the contrary, refuted all the Applicant's claims, stating that she left the Respondent's employ of her own accord, and was never dismissed. On account of these divergent stand points, the dispute remained Unresolved, and the

Certificate (Certificate no. 118/20) of Unresolved Dispute as aforementioned was issued, despite efforts to conciliate it.

3. SURVEY OF EVIDENCE

3.1 The parties herein relied on the oral testimonies of Witnesses, as well as documentary evidence to support their respective cases.

APPLICANT'S CASE **THE TESTIMONY OF MS. ZODWA PRISCILLAR** **MNDZEBELE**

3.1.1 The Applicant testified under oath that she was employed by the Respondent in May 2005, as a Clerical Officer. She further stated that at the time that her employment relationship with the Respondent ended, she was earning a monthly remuneration of E3, 315.79. She explained that as of the year 2011 she had been engaged on the basis of various fixed term contracts. She pointed out that the last such written contract was valid from 20th July, 2018, up until the 19th of July, 2019 (a copy of which was handed in as part of documents at page 21). She stated that the employer did not issue her with another written contract when this document elapsed, but Respondent's management informed her and the other employees who were in a similar position that they should consider themselves to be engaged in another year-long contract which was to expire in or about June, 2020.

3.1.2 The Applicant testified that in the month of April 2019, the Respondent started to experience financial problems, such that the employer was

failing to pay their salaries in a regular manner. She stated that when the employer did pay, it was in a very sporadic fashion because they were never paid on some months. She stated that in December of 2019, the staff left to go on Christmas break without having received their salaries, and were due to resume work on the 13th of January, 2020. She stated that this Christmas break commenced on the 23rd of December, 2020.

3.1.3 It was the Applicant's testimony that during this Christmas break, she and some of her co-workers met and decided to go and serve the employer with a letter. The letter, according to the Applicant was addressed to the Respondent's Managing Director, Mr. Thembinkosi Mndzebele, and in the contents of the letter made a demand by the employees to be paid all their outstanding salaries. A copy of the said letter was submitted as part of the Applicant's evidence, and is contained on page 17 of the Applicant's bundle of documents. The Applicant testified that when the team of employees that had been selected to go and make the said delivery of the letter actually reached the Managing Director's place of abode, a scuffle had ensued, hence the Managing Director, and the said team ended up at the Ezulwini Police Post. She stated that the Managing Director had accepted the letter, and also undertook to get back to them at a later date with his response thereto.

3.1.4 The Applicant explained that after this event, she went back to work on the 13th of January, 2020, after the Christmas break was over. The Applicant testified that when she and her co-employees arrived at the workplace, the Security guard had

barred them from entering, and asked them to remain outside the gate. The Applicant stated that they were informed that the Managing Director, and the General Manager wished to speak to each of the employees that had appended their signatures to the letter of demand that had been delivered to the Managing Director in December, 2019. The Applicant testified that when it was her turn to meet the two members of management (Mr. Dube and Mndzebele), the two gentlemen apologized for not paying her salary to her in the earlier part of January, 2020. She testified that she was informed of the dire economic position that the employer was in, and they undertook to pay her arrear salaries to her.

3.1.5 It was the testimony of the Applicant that the gentlemen informed her that the reason for failing to pay salaries was also due to the fact that the Respondent's customers had not been paying the company as they ought to do. The Applicant testified that the Managing Director went on to inform her that Management was looking into various strategies to employ in the endeavor to collect monies that were due to the Respondent. According to the Applicant, Mr. Mndzebele proceeded to tell her that going forward, he expected to work with people who were more keen to work, than to get money. She stated that she was told that she had the option of going to look for another job, or to go and purchase a stock of second -hand clothing and to sell those for a living. Her words were; "watsi ngingaya ngiyocupha emasekeni ngitsengise". She stated that the Managing Director (Mr. Mndzebele) told her to decide whether or not she was desirous of continuing to work for the Respondent, but

reassured her that she would be paid her arrear salary regardless of her decision.

3.1.6 The Applicant stated that she was further informed that she could go home and decide on whether she wanted to continue to work for the Respondent, and to return the next day. She stated that she was informed that the employer was going to provide a form, detailing whether she was still desirous of continuing to work for the employer, and if she signed then that meant that she was willing to work for the Respondent, irrespective of the employer's ability to pay her salaries on time. She stated that she had engaged in the employment relationship because she needed the salary in the first place. She stated that whilst she was sitting at home and thinking about this whole situation she came to the conclusion that the employer had effectively terminated her employment, and further reached the decision not to return to the workplace the following day because she was not willing to sign the form that she was told would be awaiting her at the gate before she was allowed to enter the workplace.

3.1.7 The Applicant stated that she decided to go to the CMAC offices to seek counsel about her rights in view of this "unfair dismissal". The Applicant submitted a letter of demand that she wrote and served upon the employer as part of her evidence (on page 14 of Applicant's documents). She stated that in the letter she demanded payment of her terminal benefits, and she later filed a Report of Dispute after she did not receive a response from the employer within a reasonable time. The Applicant testified that the employer had

eventually paid her the arrear salaries due to her, but the issue of the terminal benefits was not settled between the parties even after conciliation. She stated that she is desirous of being awarded the claims stated in the certificate of unresolved Dispute as follow;-

i)	Notice pay	-E3,315.79
ii)	Additional notice pay	-E6,631.90
iii)	Severance allowance	-E16,578.90
iv)	Maximum compensation for Automatic unfair dismissal	-E79, 578.96

3.1.8 During cross-examination the Applicant admitted that she and the Managing Director shared a surname, but she pointed out that they were not blood relatives. She stated also that when she left the employ of the Respondent, she held the position of Procurement Officer. She admitted also that there was no Workers Association, or Trade Union at the workplace. It was put to her that the employer therefore was justified in speaking to the employees on a one-on-one basis, and not as a collective regarding their grievance about the arrear salaries. The Applicant conceded that this was the case. During cross-examination she continued to reiterate that she was told by the two gentlemen (Mr. Dube and Mr. Mndzebele) at the meeting held on the 13th of January, 2020 that she had the option of signing a form so that she could continue to work for the employer. She stated that she understood that the employer expected her not to regard payment of her salary as being paramount, and that the enterprise needed people who were more keen on working rather than getting money. She confirmed that she had unilaterally decided not to go back to work on the

14th of January, 2020 because the Managing Director had told her that she should go and look for another job, or else to go and sell used clothing for a living.

3.1.9 During re-examination the Applicant conceded that she had a problem with signing the form that the Managing Director had told her about, even though she had not seen it yet. She agreed that she decided not to sign it, despite the fact that she had not seen it she confirmed that she had deemed the employer's actions of telling her to work, and not to place value on receiving a salary as being a way of dismissing her because she wanted her arrear salaries.

3.1.10 The Arbitrator herein also posed a few questions to the Applicant in order to get clarity on some issues. The Applicant was asked what she was told regarding the form that the employer was expecting her to sign the next day (14th January, 2020)? The Applicant stated that the Managing Director informed her that the form was to be signed by her so that she could be allowed to resume work, and also not to expect payment for the work performed. She conceded further that at the time her employment relationship with the Respondent ended, she had been employed on the basis of a fixed term contract that was valid from July, 2019 and was meant to expire in June, 2020. She stated that the contract was verbal in nature, and she and her employer were in total, and complete agreement in this regard. She pointed out that she had no qualms about the fact that she had only started signing fixed term contracts after she had already been employed by the Respondent for a period of approximately six (6) years. She

confirmed also that despite this, she was making a claim for the payment of terminal benefits, and compensation for unfair dismissal based on the entire fourteen years that she had worked for the Respondent.

3.2 THE RESPONDENT'S CASE **THE TESTIMONY OF MR BONGANI DUBE**

3.2.1 The Witness herein testified that he is currently employed by the Respondent as the General Manager and the Human Resources Officer of the company. The Witness stated that the Applicant had already been employed at the Respondent enterprise when he started working for the Respondent. He explained that he is aware that the Applicant had been employed on the basis of various fixed term contracts, and at the point that she stopped working at the Respondent's enterprise, she was engaged in a one year verbal contract with the Respondent which was meant to be valid until June 2020. He explained that the terms of the verbal contract were the same as the ones contained in the written contract featured on page 21 of the Respondent's bundle of documents.

3.2.2 The Witness stated that the employer had faced unprecedented financial challenges in or about the year 2019, and this caused the company to have difficulties in meeting its obligations, and this included the payment of employee salaries. He explained that he could confirm the Applicant's account of the events of December, 2019, and stated that the employees had actually written to the Managing Director demanding their salaries, and the fracas that ensued resulting in the

involvement of the police. He stated that he did not however, completely agree with the Applicant regarding the discussions that took place between the Managing Director and the Applicant during their meeting which was held on the 13th of January, 2020.

3.2.3 The Witness stated that the Applicant was given an opportunity to decide whether she was desirous of continuing to work for the Respondent, since they explained that the company was going through financial problems. He stated that the Applicant was informed that Management of the Respondent sincerely regretted the inability to pay them their salaries timeously. He stated that it is not true that the Applicant, and the other employees were told that they were not going to be allowed to resume their work unless they signed the form that was to be availed to them the following day. He stated that the Applicant had simply quoted the Managing Director out of context. He stated that the signature of the form was simply required as a show of good faith on the part of the employee that they were committed to working for the company despite its fiscal difficulties. He stated that there was nothing sinister about the requirement to sign the form. He explained that some of their current employment employees who were in the same position as the Applicant had signed the form, whilst some had not signed the form with complete impunity. The Witness stated that infact a majority of the people who had also signed the letter of demand served upon the Managing Director had actually returned work after Management had spoken to them individually on the 13th of January, 2020. He insisted that the Applicant had voluntarily left the

employ of the Respondent, and was never dismissed.

3.2.4 The Witness contended that the Applicant was not entitled to the terminal benefits that she has claimed. He stated that it is his view that the Applicant could not claim terminal benefits based on a period of employment of fourteen years, because she was working on the basis of the one year verbal contract at the time that she walked away from her own employment.

3.2.5 The Witness whilst under cross-examination clarified that he was not aware whether the Applicant was handed or issued with particulars of employment when she was initially engaged by the Respondent fourteen years ago (in the year 2005). He explained that he only started working for the Respondent after the Applicant had already been working for the Respondent for a long time. He confirmed that he had learnt that the fixed term contracts had been introduced after the Applicant had already been working for the Respondent for a few years.

3.2.6 It was put to the witness that Management had locked the employees out of the workplace premises on the 13t of January 2020, and had insisted on speaking to the employees first, before allowing them into the work place. The Witness refuted this. He stated that the employees had written to the Managing Director, hence the need to address this. He stated that they decided to respond to the letter on a one- on-one basis, rather than as a collective because the workers do not have a worker's association, and are further not

unionized. He maintained that the form that the employees were asked to sign was not in any way intimidating, nor did it require one to agree to work without being paid a salary. He maintained also that there was no bad blood between management and the employees at the given time. He pointed out that Management understood that the workers were simply exercising their right to demand their well-deserved remuneration. He explained that although their relations were normal, however the circumstances were not, hence they, as management decided to issue individual apologies to the employees, and to find out if they were still willing to carry on working for the Respondent enterprise.

THE TESTIMONY OF MR. THEMBINKOSI MNDZEBELE

3.2.7 The testimony of this Witness which was rendered under oath was that he is the Managing Director of the Respondent Company. He stated that he had indeed met with the Applicant, as well as with other employees in the middle of the month of January, 2020, and the meeting was a follow up to the letter he had received from the aggrieved employees pertaining to their arrear salaries. He explained that the company had indeed been going through very trying financial difficulties, but he had explained this position to all the aggrieved employees who had signed the letter of demand that he received earlier in that very month of January, 2020.

3.2.8 The Witness stated that he and the Managing Director spoke candidly to each employee in or about the 13th of January, 2020. He stated that he explained that the company was struggling

because the economy of the country was generally not doing well, hence their customers were not paying well. He explained also that raw materials were hard to come by since they did not have enough money to buy these. The Witness stated that the Applicant was told at the meeting that Management was expecting them all to return to work, but to think carefully, and be considerate in view of the employer's poor financial position. He stated that he and the General Manager undertook to pay all outstanding salaries as soon as possible. He explained that he and the General Manager decided to speak to the employees one by one because the police had advised him to call his employees and speak to them in a cordial fashion. He explained that he did not give the employees any kind of impression that the option of not returning to work was hinged on whether or not they received their arrear salaries. He stated that they were all expected to return to work the following day, and this was communicated to them one by one.

3.2.9 During cross-examination the Witness stated that the concerned employees were told that they were expected to return to work the next day. He stated that Management addressed the contents of the letter of demand that was served upon him. He stated that they explained the poor financial position of the company, and asked the employees to be patient. He stated that he had told them that the employer acknowledged their right to demand their salaries, but explained that their main client, being the Government of Eswatini was failing to pay them timorously. The Applicant's representative asked the Witness if he had raised the issue of selling clothes to the Applicant at all during their meeting? The Witness stated that he

had not mentioned anything about selling clothes because his company is in the sole business of making and selling furniture. He said he had no idea how the issue of selling clothes could have featured during their meeting with the Applicant. He was asked if he had suggested that the Applicant should sell clothes for a living? The Witness stated that he could not fathom how he could even suggest this since he was well aware that she had not been receiving her salary regularly, so she would not have any money to buy the stock of clothes to sell in any event.

3.2.10 The Witness was asked what the letter/form that the employees were meant to sign was for? The Witness stated that he had been advised by the police to speak to the employees and to reach common ground with them regarding their relations as employer and employee. He stated that said form was nothing more than a summary of that discussion. He submitted a copy of the document that had been availed to other employees. He pointed out that the Applicant had simply decided not to even wait to see the document before deciding to quit her job. He explained that none of the employees were forced to sign the forms, because it was not a prerequisite to their ability to resume their duties the next day.

3.2.11 The Arbitrator herein put it to the Witness the Applicant had testified that she had decided not to return to because the Managing Director had informed her that he did not need people who were only out to get money at the workplace. It was further put to him that the Applicant had stated that the Manager had told her that he was only

keen to work with people who only looked forward to putting in work for the company, rather than being paid. The Witness refuted this assertion. He said that the Respondent company is over twenty years old, and this unprecedented financial position had never befallen it, such that their employees had always been paid their salaries on time before their problems started. He stated that it would not be fair, nor reasonable for Management of the company to expect their employees to work for free.

THE TESTIMONY OF MS. ZODWA DLAMINI

3.2.12 The Witness testified under oath that she is currently employed at the Respondent enterprise as the Transport Supervisor. She testified that she was one of the employees who demanded their outstanding salaries from the employer through a letter served upon the Managing Director in or about the earlier part of January, 2020. She stated that she also recalls the meetings (one-on-one) held with Management on the 13th day of January, 2020. The Witness stated that the Managing Director explained to her at the meeting that the company was facing financial problems, hence the inability to pay their salaries timeously. She stated that the Managing Director undertook to find a way to ensure that he settled all their arrear salaries. She stated that the Managing Director had pointed out to her that since the company had started operating, the employees had always been paid their salaries on time. She stated that she had agreed with him because since she started working for the Respondent, this period was the only one

she could point to where she had not received her salary.

3.2.13 She went on to testify that she was then told of a document that summarized the gist of their meeting which would be availed the next day for her to sign. She stated that she had made a conscious decision to wait and read this document herself before she signed it. She stated that she had indeed read the document, and saw that it was merely a resolution which summarised the discussions that had taken place between herself and the employer, hence she had no qualms in signing it, and returning to work on the 14th of January, 2020. During re-examination she confirmed that the resolution document was availed to her the day after the meeting which was held on the 13th of January, 2020. She had submitted the copy of the said document as part of her evidence. She confirmed that she signed it on the 14th of January, 2020. She stated that even at the meeting which was held on the 13th of January, 2020, the two gentlemen from management had not coerced her into signing the letter. She said that they informed her that the document was a resolution which summarised the details of their discussions, and if she agreed with its contents then she was asked to sign it. She pointed out that she had signed the document because she did agree with the contents, and was keen on receiving her arrear salary. She said that she saw no harm in the contents of the form/letter. The Witness testified that since she resumed her duties on the 14th of January 2020 she has been receiving her salary regularly, and even the arrear salary has been settled by the Respondent.

4. ANALYSIS OF EVIDENCE AND SUBMISSIONS

- 4.1 The Applicant herein is entreating the Arbitrator to find that she was dismissed in a manner that was automatically unfair. According to the Applicant she was dismissed by the Respondent for the simple fact that she was enforcing her right to demand her hard-earned remuneration, because the Respondent owed her and her co-employees arrear salaries. It was her testimony that at the meeting between herself and the two management members being; Mr. Thembinkosi Mndzebele (the Managing Director), and Mr. Bongani Dube (the General Manager/Human Resource Officer), on the 13th of January, 2020, she was dismissed from employment.
- 4.2 According to the Applicant, the Managing Director informed her that he was not eager to work with people who were more focused on receiving a salary, rather than rendering their services and working for the employer. She stated that she was told that she was also told that the next day, a form would be availed to her, and if she agreed to work without expecting remunerating, she was to go ahead and sign this document. She stated that she had decided not to sign the document, and further not to go back to the workplace. She also stated that to support her assertion that she was dismissed, Mr. Mndzebele told her to go and look for another job, or to sell used clothes to earn a living if she did not want to work with no expectation of remuneration.
- 4.3 Mr. Mndzebele when he testified was steadfast in his testimony that he did not dismiss the Applicant, and nor did he tell her to look for alternative employment. He further stated when he was asked during cross-examination, that he had never mentioned anything

about “selling used-clothes” to the Applicant. He was quite confused when this question was posed to him. He was visibly at a loss as to why he would be talking about selling clothes, because he is in the business of selling furniture, and not clothes. He stated that he did not tell her to go and sell clothes for a living because he was well aware that he owed her outstanding salaries, hence she would not have the money to buy these in the first place. He acknowledged the right of the Applicant to demand her outstanding salaries, and further stated that he could never expect any person, let alone the Applicant, to work without the expectation of being remunerated.

- 4.4 Messrs Mndzebele and Dube in their testimonies, were *in tandem*, in that, in that they would not expect that employees of the Respondent would work for free. They further acknowledged that they were aware that the employees (including the Applicant) were fully within their rights to demand their outstanding remuneration from the employer. They stated that the form/document that the employees were expected to sign was simply an agreement and/or resolution which summarized the contents of their discussion on the 13th of January, 2020. They stated that other employees had been asked to sign similar documents, and some had not bothered to sign the documents at all, but had simply gone back to work without doing so. Despite robust cross-examination on the part of the Applicant’s representative, he was not able to dislodge the two Witnesses from their positions.
- 4.5 Mr. Mndzebele submitted a blank copy of the document that Management team had asked the

employees to sign. Ms. Zodwa Dlamini who is currently employed by the Respondent, and was one of the employees who were called to take one-on-one consultations/deliberations with management on the 13th of January, 2020 also submitted her own signed copy of the same document. She testified that the document, which was made part of her evidence, was signed by herself on the 14th of January 2020 after she read through it and decided that there was nothing sinister in its contents. She pointed out that the contents of the document were a mere summary of the deliberations that took place between herself, and the two members of management. She explained that in terms of the document, they agreed to foster better communication between them about the fiscal position of the company, and/or any delays in payment of salaries. Indeed, she testified that whilst she had worked with the Applicant, she had a very good relationship with her because she “showed her the ropes” when she first joined the company, since the Applicant had worked there for much longer than her. She further stated that she did not know anything about being made to work for the company without expecting remuneration, and further did not feel in any way coerced into signing the document.

SUBSTANTIVE FAIRNESS

- 4.6 The Applicant herein alleged, and indeed founded her entire case on a claim that she was dismissed in a manner that was automatically unfair. **The Industrial Relations Act, 2000 (as amended) in Section 2** defines an automatically unfair dismissal as being one where the reason for the dismissal is formed on the following premise;

“That the employees took action, or indicated an intention to take action, against the employer by-

- i) Exercising any right conferred by this Act, or
- ii) Participating in any proceedings in terms of this Act (see Section 2 (d) (i) & (ii))

The Applicant herein claimed that she was dismissed by the Managing Director of the company on the 13th of January, 2020 because he stated that she should be willing to work for the company without expecting remuneration. She further stated that the same Managing Director suggested that she should sell used clothing to earn a living instead, if she was unable to accept the condition that she was expected to work without the expectation of being paid a salary. She admitted that she did not even see the document that the two gentlemen from management told her would be availed to her she acknowledged. She also acknowledged that she had unilaterally decided that she would not sign the document because she could not accept that she would be expected to work for free.

- 4.7 The document which was submitted as part of the Respondent's evidence had been subjected to thorough scrutiny by the Arbitrator herein. The document is captioned "Resolution 1/2020" and is basically a summary of the deliberations that took place between the employees and management. Further to this, it is a standard document that was provided to all the concerned employees, who had submitted a demand to the employer regarding their outstanding salaries. The document emphasized "the importance of being solutions-driven, so as to avert any form of harsh confrontations and/or aggression" (as captioned in the last paragraph). The preceding paragraphs pertain to the need to have more proactive means of communication between the

employer and the employees regarding any grievances and/or concerns. It further emphasized “open dialogue and diplomacy” within its text (paragraph 4). The document in its entirety does not feature any requirement for the employee to sign away their right to be remunerated for the work that they render to the employer. Indeed, this would be an unlawful term within the said ‘agreement’ because it is a basic right under our Common Law for an employee to be paid a remuneration for work done. **The Learned Authors Van Jaarsveld F. & Van Eck S. (2002), page 77** opine as follows:-

“The employer’s duty to pay is the most important duty he has towards his employees. The payment of remuneration by the employer to the employee for his services is essential to the legality of the contract of employment.”

- 4.8 Additionally, the Applicant’s uncorroborated evidence was that she was dismissed by the Managing Director by suggesting that she should rather go and sell clothing as a means of earning a living than to expect remuneration. The Managing Director firmly refuted these allegations, and by his words and demeanor, it was clear he was utterly befuddled how he could have said this. He stated that he knew she had no money to purchase the very stock she would be called upon to sell since she had not been paid her salary. He further stated that the Respondent company sells furniture and not clothes. This reaction was quite spontaneous, and quite believable. This was clearly a mystery to him. Further to this, the evidence of the General Manager, and that of Ms. Zodwa Dlamini corroborated the evidence of the Managing Director that there was no expectation on the part of Management for employees to work without remuneration. Indeed both Mr. Dube and Mndzebele,

in unison, explained that Management of the Respondent was quite aware that the aggrieved employees (including the Applicant) were well within their rights to expect to be paid their arrear salaries.

- 4.9 The Applicant in this regard, it is my considered opinion, has failed to make out a case of automatic unfair dismissal, let alone one for the conventional “unfair dismissal”. The evidence and assertions of the Applicant were rather reminiscent of a case of Constructive Dismissal. Indeed, it was an issue that was raised by the Respondent’s Attorneys who were belatedly instructed to prepare closing submissions on the company’s behalf. As aptly stated in the case cited by the Respondent’s Attorney being **Pinky Toi Mngadi v. CONCO (Pty) Ltd t/a Coca Cola Swaziland (Pty) Ltd I.C Case No. 199/2008**, wherein the Court referred to the test for determining whether an employee had been Constructively Dismissed as being the following:

“The inquiry (is) whether the employer, without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and between the employer and employee. It is most necessary to show that the employer intended any repudiation of a contract: the Courts function is to look at the employer’s conduct as a whole and determine whether....it’s effects, judged reasonably and sensibly is such that an employee cannot be expected to put with it.”

The Court herein at **paragraph 14** sourced this test from the case of **Pretoria Society for the Care of the Retarded v. Loots (1997) 18 ILJ 981 (LAC)** at page 985.

4.10 Indeed it would have been an intolerable situation that the Applicant would have been confronted with if she was told by the employer to work without remuneration, or to go and sell used clothes instead if she could not put up with this. Indeed it is important to point out, and it should not be lost sight of, that the Applicant has not alleged that she was constructively dismissed; hence it is not really a question that the Arbitrator herein is confronted with. It is worth pointing out however, that even if this had been her case, she was not able to prove the elements of this case either. It was clearly demonstrated by the Respondent's evidence, when Ms. Zodwa Dlamini testified that although she was in the same position as the Applicant, she did not react in the same manner. This Witness actually took the time to read the document that the employer expected her to sign, and saw that there was nothing similar in its contents. She proceeded to sign it, and went back to work. The Applicant herein did not bother to even find out what the document contained, but made up her mind that she could not sign it. It is unfortunate that she was not able to support her allegations that she was dismissed by the Respondent, and also felt that she in essence was being expected to work for the Respondent for free. In these premises, the Arbitrator herein has no alternative but to find that a case of automatically unfair dismissal, (or any kind of dismissal at all for that matter) has not been proved on a balance of probabilities by the Applicant herein.

4.11 It is apparent, and it is my finding herein that the Applicant terminated her employment contract with the Respondent of her own volition. As a consequence therefore, the Applicant cannot be found to be entitled to the claims that she makes herein. There

were a number of interesting, and quite contentious issues that were raised by the Applicant's representative in these proceedings to wit:-

- i) That the Applicant had not been issued with particulars of employment when she was initially employed by the Respondent in or about the year 2005.
- ii) That the failure of the Respondent to furnish the Applicant with said particulars of claim had the effect of somehow influencing, or at the very worst, viciating the various fixed term contracts of employment that the parties herein concluded from the year 2011, until the date that her employment with the Respondent ended.

It is my considered opinion that in view of the holding that the Applicant herein terminated her own employment relationship with the Respondent, these are questions that no longer require the Arbitrator to make a determination. These issues would have been relevant, had there been a need to consider the quantum of the Applicant's terminal benefits, and/or compensation for unfair dismissal if such a case had been sufficiently made.

5. **AWARD**

- 5.1 Having heard the evidence and submissions by both parties herein, it is hereby held that the Applicant has failed to make out a case of automatically unfair dismissal, or any dismissal at all.

