

DEFAULT JUDGMENT



DATE: 30th September, 2020

CMACREF : SWMB 204/20

In the matter between :-

APPLICANT: Name: **DEROSE HR CONSULTANTS (PTY) LTD**

Address: **P. O. BOX 2853**

MANZINI

AND

RESPONDENT: Name: **THABO MAZIBUKO**

Address: **P. O. BOX 9059**

MBABANE

1. NATURE OF DISPUTE

1.1. The nature of the dispute is: **Breach of Contract**

2. DISPUTE DETAILS

2.1. The matter first appeared on the CMAC roll on the 10th August 2020 before the Commissioner appointed to conciliate the dispute between the parties. The record shows that on this date, only the Applicant was present and the Respondent was not in attendance.

2.2. Due to the unavailability of the Respondent on the 10th August 2020, the matter was postponed to 18th August 2020 in order to give the Respondent a second chance to attend to the Conciliation process. The Respondent still did not show up on this day. The matter was postponed on several other dates, namely 20th August

2020 and 16th September 2020 to allow the Respondent to attend to the matter, but in all these dates the Respondent failed to attend to the Conciliation meeting. The record shows that the Respondent was called on his mobile phone and informed about the conciliation dates but he indicated that he would not attend to the matter.

- 2.3. There was no reasonable explanation why the Respondent did not attend the Conciliation meeting on all the dates, and having satisfied myself that the Respondent was aware of the Conciliation meeting as indicated herein above; the dispute was subsequently referred for default judgement in terms of Section 81(7) (b) of the Industrial Relations Act, 2000 as amended. I was then appointed to arbitrate the matter.

3. EVIDENCE OF PARTY IN ATTENDANCE

The evidence of the party in attendance, one Miss Tanele Dlamini was as follows:

- 3.1. The Applicant's witness, Miss Tanele Dlamini is an employee of the Applicant. The witness stated that the Respondent, Thabo Mazibuko was also employed by the Applicant on the 3rd March 2020. On employment, the Respondent was given a 3 months fixed term contract of employment to sign. The fixed term contract of employment for the Respondent was coming to an end on the 3rd June 2020.
- 3.2. The witness stated that on the 25th May 2020, they, as a company paid the full salary of the Respondent in anticipation that the latter would see his contract to the end, that is, 3rd June 2020.
- 3.3. Contrary to the Applicant's expectation, the Respondent, having been paid his salary, immediately stopped coming to work despite the fact that the Applicant paid his salary up to the 2nd June 2020

which would be the last day of work for the Respondent.

3.4. The testimony by the Applicant's witness was that from the day on which the Respondent was paid his salary, namely 25th May 2020, up to the 3rd June 2020 when the Respondent contract of employment would come to an end makes up a period of 6 days. In monetary terms, the 6 days which the Respondent refused to work equates to the sum of E 692.32. (Six Hundred and Thirty-Two Emalangi).

3.5. Miss Dlamini applied that the Respondent be directed to pay back to the Applicant, the sum of E 692.32 in respect of the days in which he refused to render service as agreed in the written contract of employment.

4. ANALYSIS

4.1. From the sworn testimony of Miss Dlamini which was not disputed, it is clear that the Respondent stopped working for the Applicant on the 25th May 2020 whereas he was expected to continue working up to the 3rd June 2020 in terms of the written contract of employment between the parties. This written contract of employment was produced by the Applicant's witness as part of her evidence and it indeed indicates the last day of work for the Respondent as being the 3rd June 2020.

4.2. Accordingly, the Respondent is in breach of the fixed term contract of employment that he signed with the Applicant due to his failure to see his contract to the end in June 2020.

4.3. The Applicant is entitled to a refund in respect of the 6 days in which the Respondent refused to come to work as expected.

5. OUTCOME DESIRED BY PARTY IN ATTENDANCE

5.1. The Applicant is desirous of being paid the sum of E 692.32 in respect of the 6 days not worked by the Respondent.

6. DEFAULT JUDGMENT GRANTED

6.1. The Respondent is directed to pay to the Applicant the sum of **E 692.32 (Six Hundred and Ninety Two Emalangi and Thirty Two cents.**

6.2 The Respondent is to pay the sum of E 692.32 at CMAC offices in Mbabane, Dzeliwe Street on or before the **10th November 2020.**

THUS DONE AND SIGNED AT MBABANE ON THISDAY OF OCTOBER 2020.

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BONGANI S. DLAMINI
CMAC COMMISSIONER