



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

In the matter between:

Case No. 2177/1999

MUSA MADLOBONGWANE HLONGWANE

Applicant

And

WILLIAM DLAMINI N. O.

1st Respondent

ACCOUNTANT GENERAL

2nd Respondent

SWAZILAND GOVERNMENT

3rd Respondent

Neutral citation: *Musa Madlobongwaneheila Hlongwane v William Dlamini N. O. & 2 Others (2177/1999) [2014] SZHC 20 (21st February 2014)*

Coram: M. Dlamini J.

Heard: 5 February 2014

Delivered: 21 February 2014

Applicant demanding his employment file to be submitted to the Pension Fund – no basis as applicant was never a member of Pension Fund by reason of his employment having terminated prior to the promulgation of Public Service Pensions Act

Summary: The applicant seeks for an order compelling 1st respondent to transmit his employment file to the 2nd respondent. The 1st respondent opposes the application on the basis that applicant was never a member of 2nd respondent.

Applicant's contention:

[1] Applicant avers as follows:

- “4.1 On the 10th April, 1978, I was employed by the Umutfo Swaziland Defence Force. I served in the army until I was promoted to the rank of corporal.
- 4.2 While under the employ of the Umutfo Swaziland Defence Force, my employment number was 4239661 and my force number was 731285.
- 4.3 Whilst a serviceman under the Umutfo Swaziland Defence Force, I made monthly contribution to the Public Service Pension Fund until the 18th June 2002, when I was discharged from the Army. A copy of the certificate of discharge is annexed herewith and marked “Musa 1”.
- 4.4 On the 10th March 2009, I instructed my present Attorneys to demand from the Public Service Pension Fund my pension contributions. A demand was made to the Public Pension Fund, through a letter that the Fund received on the 12th March 2009. A copy of the letter is attached herewith and marked “Musa 2”.
- 4.5 On the 24th March 2009, Public Service Pension Fund responded through a letter that was faxed to my Attorneys. The Fund advised that my former employers wanted to have a discussion with me. A copy of the

letter from the Public Service Fund is attached herewith and marked “Musa 3”.

4.6 *After consulting with my Attorneys and being advised that I should have an audience with my former employer, I went to the Umtfo Swaziland Defence Force headquarters. It is disheartening that there was never any meaningful discussion, other than that I was belittled by the personnel department there and informed that I will not get anything from the Army.*

4.7 *After the bad treatment I had received from the Army, I then instructed my Attorney to demand that the 1st Respondent forwarded my employment file to the Public Service Pension Fund. A copy of the letter is attached herewith and marked “Musa 4”.*

4.8 *On the 26th May 2009 the 1st respondent responded to my demand and advised that it would not forward my employment file to the Public Service Pension Fund. A copy of the letter from 1st Respondent is attached herewith and marked “Musa 5”.*

[2] During the hearing, the court was referred to a judgment of this court in support of respondents’ opposition that the applicant was never a member of the Pension Fund.

[3] The judgment was under case No.1527/1999. This judgment was following an application upon which applicant sought to be paid salary arrears from October 1993 to June 1999. The 1st respondent opposed the application on the basis that applicant deserted his employment in June 1993. On this finding in favour of respondent, the trial court held at page 8-9 as follows:

“There is no master and servant relationship anymore, since he constructively unilaterally, finally and effectively terminated it as long ago as 1993. For the above reasons alone, the application should not succeed, in my view.”

[4] At page 11 of the said judgment the learned judge held:

“He is said to have deserted the army many years ago, and admits it in his papers. To now hold contrary would fly in the face of the applicant’s own admissions and acknowledgement of stated facts.”

[5] On these findings by this court it is clear that the applicant ceased to be under the employ of 1st respondent in June 1993.

[6] In 1st November 1993 a Public Service Pension Order No.13 of 1993 was promulgated. Section 3 provides:

“Establishment of Public Service Pensions Fund

3. (1) *There is hereby established a Fund to be known as the Public Service Pensions Fund with perpetual succession and common seal which may sue and be sued in its corporate name.*

(2) *The Fund shall, as from the commencement date of this Order, be responsible for the payment of all benefits arising under this Order and Regulations and pension benefits to individuals who are entitled to receive such benefits under the provisions of the Pensions Act, 1968, the Umutfo Swaziland Defence Force (Gratuities) Regulations, 1979 and CUSADA Pension Scheme on that date.”*

[7] From the above section, it is clear that during his employment, applicant’s retirement benefits were regulated in terms of the Umutfo Swaziland

Defence Force (Gratuities) Regulations, 1979. On the basis of the judgment under case number 1527/1999 which found that applicant's employment was terminated in June 1993, the applicant cannot claim any right under the Public Service Pension Order No.13 of 1993 by reason that when it came into force on 1st November 1993 his contract of employment had terminated in June of the same year. In the result, applicant was never a member of the Public Service Pension Fund. For this reason, there is no basis in law to compel the 1st respondent to submit applicant's employment file to the 2nd respondent.

[8] For the foregoing, I order as follows:

1. Applicant's application is dismissed.
2. Applicant is ordered to pay costs.

M. DLAMINI
JUDGE

For Applicant : N. Ndlangamandla

For Respondents : N. B. Zwane