



IN THE HIGH COURT OF ESWATINI

JUDGMENT

CIVIL CASE NO.: 151/2019

In the matter between:

HELFO RD BHUNYA MSIBI

APPLICANT

And

**THE PRINCIPAL SECRETARY
MINISTRY OF PUBLIC SERVICE
ATTORNEY GENERAL**

**1ST RESPONDENT
2ND RESPONDENT**

Neutral Citation:

Helford Bhunya Msibi vs. The Principal Secretary Ministry of Public Service and Another (151/19) [2019] SZHC 111 20th June 2019

Coram:

MLANGENI J.

Heard:

19th June 2019

Order made:

19th June 2019

Judgment:

21st June 2019

JUDGMENT

- [1] This matter deserves a short judgment, and short it will be. Part of the reason is that the Respondent did not appear to argue its case despite being aware that the matter was to be argued on the 19th June 2019 at 9:30 am. The matter was called at 9:35am.
- [2] When the matter was called Mr. M.H Mdluli, for the Applicant, moved the court to hear him and grant the orders sought. Having read the papers, I asked him if the Applicant was ever paid a training allowance (upon recruitment) and salary (upon enlistment) in the name of Ernest Shongwe, the putative name. He answered in the negative. I asked this question because it appeared to me to have the potential to resolve the dispute between the parties, but for all the gusto in their pleadings it did not occur to them that it could be a firm pointer in one direction or the other.
- [3] The Applicant is an employee of the Respondent. The dispute between them is about the Applicant's date of birth, whether it is 1959 or 1962. The significance of the date of birth is that if he was born in 1959 he would be due for retirement in 2019 and probably would have retired by now, but for the pending litigation regarding his date of birth.
- [4] Part of the evidence that he has presented to the court is his birth certificate and a form that is styled '**Personal Data Form**'. The birth certificate proclaims that the Applicant's date of birth is 18th January 1962. The Respondent is not alleging that the birth certificate is either not genuine or that it has incorrect information. My understanding of

the law is that a birth certificate which complies with all the formalities is *prima facie* proof of the subject's date of birth. Indeed, it must be so, because if it wasn't so one would need to take one's biological parent wherever there was need to confirm the date of birth. In the absence of a challenge to the Applicant's birth certificate, I accept that he was born on the 18th January 1962. This date corresponds with that on his National Identity Card.

- [5] The Respondent avers that at recruitment the Applicant presented himself as Earnest Ntokozo Shongwe, and Ernest Shongwe was born on the 8th July 1959, hence the Applicant, as Earnest Shongwe, must retire in this present year. The Applicant vehemently denies that he presented himself as Earnest Shongwe at recruitment and states that he has never met a man of that name. As I indicated above, if the Applicant was recruited as Earnest Shongwe then his allowance and/or salary would have been paid in that name, and in that case there would be nothing to argue about.
- [6] It is on the basis of the above that on the 19th June 2019 I granted the application in terms of prayers (a) and (b) of the Notice of Motion dated 6th February 2019.



T.M. MLANGENI

JUDGE OF THE HIGH COURT

For the Applicant: Attorney M.H. Mdluli

For the Respondent: No appearance