

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO.161/2002

In the matter between:

DR. CEPHAS LUMINA

APPLICANT

and

UNIVERSITY OF SWAZILAND

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

FOR THE APPLICANT:

P.R. DUNSEITH

FOR THE RESPONDENT:

MUSA SIBANDZE

RULING

8/7/02

In this application, which is brought under a certificate of urgency, the applicant prays for inter alia:-

- (a) Waiving the usual requirements of the rules of court regarding the notice and service of applications in view of the urgency.
- (b) Directing the respondent to reimburse the applicant with an amount of E10,132 being the cost of air passages disbursed by the applicant in respect of repatriation of the applicant's children from Matsapa to Brisbane, Australia.
- (c) Directing the respondent to pay the applicant baggage allowance in terms of Clause 13 of the applicant's contract of service from Matsapa to Brisbane, Australia,

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- (d) Directing the respondent to pay to the applicant's travel agent, Professional Travel Services Ltd, the cost of air passages for the plaintiff and his wife from Matsapa to Brisbane, Australia.
- (e) Alternative to prayers (b) (c) and (d) above, directing the respondent to pay to the applicant the monetary equivalent in cash of the cost of passages and baggage allowance for the applicant, his wife and two children from Matsapa to Lusaka, Zambia.

The applicant in his founding affidavit deposed as follows:

That he was employed by the respondent as a lecturer in the department of law for a period of two years from 1st July 2000 to 30th June 2002.

According to Annexure 'A' and at clause 8 applicant is entitled to passages at the end of the contract to his place of domicile and recruitment. Applicant was recruited in Brisbane, Australia and he regards this

place as his place of domicile.

Applicant further states that he intends to return to Brisbane Australia. His children are presently attending school in Australia having left the country permanently in May 2002. He also pointed out that his wife is due to recommence her studies at Martin College in Brisbane in the next semester.

He stated that he has already incurred expenses in respect of air passages from Manzini, to Brisbane for the children and avers that he is entitled to compensation.

On the other hand the respondent contends that the applicant was recruited in Australia, but that as per letter of offer which the applicant signed he is regarded as having been appointed from his normal place of residence in Lusaka Zambia.

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The letter of offer is annexed in applicant's application as annexure 'E5, and it reads in paragraph two;-

"you will be regarded as having been appointed from your normal place of residence in Zambia, although your initial passage will be from Australia ".

Article 8 of the contract reads as follows:-

"8. Passage at the end of contract

8.01 The entitlement to passages at the end of contract will be to the employee's place of domicile and recruitment as declared in the particulars ".

It is quite clear from the applicant's affidavit that the place he regards as his domicile is Brisbane, Australia. He might have been bom in Lusaka, Zambia but his conduct and what he has deposed to points out that he regards Australia as his permanent home.

However, this court is alive to the fact that applicant, who is also a lawyer by profession was given an offer by the respondent and he accepted the offer by appending his signature on the dotted line. He agreed with the respondent that he was to be regarded as having been appointed from Zambia.

It is therefore clear that the applicant's domicile and place of recruitment for the purposes of this contract is Zambia. If applicant had a contrary view he would have refused signing Annex 'E'.

After having reached this conclusion it is also clear that the applicant does not want to be repatriated to Zambia but wants to go to Australia where his children are studying and where he has arranged a place for his wife to further her studies. He also intends to work in Australia. However, we cannot direct the respondent to pay him expenses of relocating in Australia. This is because at the time he signed the contract he was aware that at the end of his contract he would be repatriated to Zambia and he agreed to that.

Under circumstances the respondent is ordered to pay to the applicant monetary equivalent in cash of the cost of passages and baggage allowance for the applicant, his wife and two children from Matsapha to Lusaka, Zambia.

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No order as to costs.

Members agree.

KENNETH NKAMBULE

JUDGE - INDUSTRIAL COURT

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No order as to costs.

Members agree.

KENNETH NKAMBULE

JUDGE - INDUSTRIAL COURT

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