

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 273/2003

In the matter between:

CONSTANCE SI ME LANE APPLICANT

and

SWAZILAND ELECTRICITY BOARD RESPONDENT

CORAM:

NDERI NDUMA: PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

LINDIFA MAMBA: FOR APPLICANT

MUSA SIBANDZE: FOR RESPONDENT

J U D G E M E N T 8/12/05

The Applicant claims the following:

"1.1 Payment of E218J19.80 being arrear salary.

1.2 £6,400 British Pounds as being 50% sponsorship for training;

1.3 E292,266.40 as maximum compensation for unfair dismissal; alternatively reinstatement.

Prior to the making of the closing arguments by Mr. Mamba for the Applicant and Sibandze for the Respondent, it was disclosed to the Judge in chambers that at least two of the tapes bearing part of the evidence in this matter were inaudible.

For clarity it was agreed by the parties that they were both in a position to make final submissions on the matter and this was un-affected by the inaudible tapes. The court made it clear to them that the judge does not as per practice resort to listening to the tapes in making judgement. That for this the judge relied entirely on his notes and the papers filed of record.

The decision as to whether they would be in a position to reconstruct the record in the event of an appeal was left to the parties.

BACKGROUND

The history of this matter is well documented in exhibits A1 up to A15 all produced by the Applicant.

The contents of the documents aforesaid are not in dispute.

This matter strictly hinges on the determination as to whether an Agreement was concluded between

the Applicant and the Respondent on the following issues:

1. That the Applicant was to proceed to the United Kingdom on study leave for a masters Degree in Business Administration.
2. That the Respondent was to pay:
 - 2.1 50% of the fees and other expenses for the training.
 - 2.2 Full monthly salary during the one year study leave.
3. If there was no such agreement, whether the Respondent conducted itself in a manner as to lead the Applicant to a reasonable conclusion that such was the case.
4. If the Respondent had a reason provided by Section 36 of the Employment Act to dismiss the Applicant.
5. If it was fair and reasonable to dismiss the Applicant taking all the circumstances of the case into account.

The Applicant held the position of Regional Accountant situate at Shiselweni Region. She was employed by the Respondent on the 23rd September 1991. She was dismissed on the 3rd April 2002. At the time of the dismissal she earned a monthly salary of E12,151.10 (Twelve Thousand One Hundred and Fifty One Emalangen Ten Cents).

The dismissal was for absenting herself from duty without permission from the employer for a period of more than three days. Reliance was made by Mr. Shongwe the Acting Managing Director on the provisions of Section 36 (f) of the Employment Act No. 5 of 1980 to dismiss the Applicant. See the letter dated 10/1/02.

This letter was a warning to the Applicant to return to Swaziland from the United Kingdom where she was based at the time by the end of February 2002, or else she would be dismissed. As it came to pass, the Applicant who was in the middle of her studies at the time did not adhere to the warning and was dismissed in absentia on the 3rd April 2002.

It is apposite to note that at the time this warning was made to the Applicant by Mr. Shongwe, she had been away in the United Kingdom on study from the 20th September 2001 (a period of over 3 months).

No prior communication to this effect had been made to the Applicant until she wrote to the Respondent on the 26th November 2001 (see exhibit A12') upon realization that her salary had been frozen. Mr. Shongwe took one and half months to respond to the Applicant's letter.

On the day before the Applicant left for the United Kingdom (20/09/01), she wrote to Mr. Shongwe exhibit All informing him that she would be proceeding to the Boston Institute in the UK "for a full time Masters in Business Administration Programme despite your sudden withdrawal of the earlier granted 50% share of the funding".

In the letter she went on to say:

"It is my understanding that SEB has by virtue of your letters dated 30th August 2001 and 11th September 2001 stating SEB's refusal to grant me funding has granted me leave of absence for a period

of one (1) year. Based on this premise, I will resume my normal duties as Regional Accountant for the Shiselweni Region on my return".

Mr. Shongwe did not respond to this letter at all and as indicated the Applicant flew to the United Kingdom the following day.

It is important then to look at the two letters by Mr. Shongwe referred to in All.

The letter dated 30 August 2001 is written by Mr. Shongwe to the General Manager Human Resources, Legal Advisor and to the Applicant and is exhibit 7\7'. .Due to its importance, I will quote it in full:

"STUDYLOAN - CONSTANCE SIMELANE

An appeal for a study funding has been received from the above named employee. Kindly grant her a study loan of E35,000 towards her school fees. She should sign an acknowledgement of debt form in accordance with the existing training policy. This amount will be deducted from her salary on return from her studies if she fails her exams. This kind gesture is done on the understanding that it will not create a precedent".

The Applicant went ahead with her plans to travel to the United Kingdom for her studies. She did not respond to 7\7' aforesaid. According to uncontested evidence before court, she went ahead and made arrangements with her supervisor M/s Mkhonta for her replacement while she was away, handed over and the Respondent transported her possessions from the company house and office. Indeed, the study

application form was endorsed by M/s. Mkhonta, the supervisor on the 19th February 2001.

In response to queries raised by Mr. Sikelela P. Qwabe the Training and Development Coordinator in a letter dated 5th June 2001 regarding:

(i) The need for the training

(ii) Replacement whilst Applicant was away.

(iii) And budgetary constraints during the period. M/s Mkhonta wrote exhibit '4' dated the 26th July 2001 wherein, she assured Mr. Qwabe that she would have no problem in releasing the Applicant for the studies stated in the application form. That she did not envisage any problem in filling up the vacancy while the applicant was away and she recommended that the Respondent would benefit from the training of the Applicant since the Respondent was in need of better trained personnel.

Due to the reluctance of Mr. Qwabe to sanction the study leave, the Applicant appealed to the Chairman of the Board of Directors in exhibit V\5' dated the 31st July 2001.

In response to the letter to the Board, the Acting Managing Director Mr. Shongwe wrote to the Applicant noting the appeal to the Board and requesting the Applicant to follow established grievance procedure in place at the undertaking. On the 30th August 2001, Mr. Shongwe however granted the Applicant's wish of 50% funding but specifically E35,000 (Thirty five Thousand Emalangeni) towards the school fees.

On the 10th September 2001 the Applicant and Mr. Shongwe had a meeting at his office where the issue of the scholarship was discussed. The contents of the meeting are revealed in a letter dated the 11th September 2001 produced as exhibit 7\9' written by the Applicant to Mr. Shongwe as follows:

"FUNDING FOR STUDIES

Following the conversation which took place between myself and the Acting Managing Director on Monday 10 September, at Mbabane, I received the news with great disappointment at the decision by the SEB Management that the 50% study loan which had been offered earlier on is again being referred back to the Board of Directors for re-approval. Seeing that I am already left with 4 days to go, referring this issue back to the Board to me seems to frustrate my efforts till I am left with no other option but to abandon the move. Under the circumstances I therefore appeal once again for funding, at least a loan to cover my tuition fee and an air-fare whilst the Board looks into the issue. Meanwhile, I shall make ways to improvise till the whole issue is sorted out

Your consideration in this regard will be highly appreciated".

On the same day Mr. Shongwe wrote to the Applicant exhibit 'A8' purporting to recant the grant of the scholarship contained in his earlier letter of the 30th August 2001. The retraction was on the basis that he had misunderstood the issue of the fees. The letter reads as follows:

"STUDYLOAN REQUEST

Reference is made to my letter to General Manager Human Resources on the above date 30th August 2001 copied to yourself.

I wish to advise that there was a gross misunderstanding on the fees requested on your part which has been explained at length to you by the General Manager Human Resources and myself.

Accordingly I wish to withdraw the offer expressed in my letter because of the high fee involved."

The following day, the 12th September 2001, the husband of the Applicant faxed through from the United Kingdom, the Guarantee for the payment of the 50% tuition fees. The guarantee purports to be for E70,000 representing 50% of the total college fees. This meant that the full cost of the training was E140,000.

According to Mr. Manana, the Human Resources Manager in his testimony before court, the guarantee provided by the Applicant's husband was unacceptable because they could only accept a guarantee from a reliable institution or the government. The Respondent however did not write to the Applicant to that effect until she left for the United Kingdom on the 21st September 2001. The Respondent did not provide the airfare but had arranged for her replacement at Shiselweni, the handing over and for the transport of her items from the company premises.

It is the Applicant's case that up to the time she left Swaziland, the only issue that remained to be resolved was with respect to the extent of contribution towards the fees by the Respondent. It was understood by both parties that she was going on study leave to the United Kingdom and to join her husband there. That even in the final correspondence by Mr. Shongwe dated 11th September 2001 referred to earlier (A8) the issue of going was not queried at all. The Acting Managing Director had only requested her to provide a guarantee for the 50% sponsorship. At this time, he had understood the full requirement for the programme, if indeed he had not grasped the same earlier.

He was aware by then that the trip was imminent. The Applicant had already moved to Mbabane, had already been replaced at work, and the Respondent had already moved her property out of the company premises. He was aware that her spouse was in the United Kingdom. He however did not come out clearly and in writing on the issue of the imminent departure.

Even upon receipt of the last letter by the Applicant dated 20th September 2001 wherein she indicated that she was leaving for the studies on the understanding that she had been granted in the least, leave of absence for a period of one year, he did not respond.

Mr. Jeremiah Jerry Manana testified for the Respondent. He was the General Manager Human Resources at the time. He had since retired from the employ of the Respondent.

He told the court that the Applicant had discussed the issue of the scholarship with him upon which he advised her to fill in the appropriate form. Thereafter the matter was deliberated upon and it was found

to be impracticable to offer the Applicant the scholarship.

According to him the scholarship was rejected mainly due to lack of finances. It was considered that the primary motivation by the Applicant to go to the United Kingdom was to join her husband. The study was a secondary matter. This was not budgeted for hence the rejection. There was no immediate need to train the Regional Accountant. He admitted however that the Regional manager and the Divisional Head recommended that the Applicant undertakes the study. He however stated that their approval was just the beginning of the process and the matter was still to be approved by the Human Resources Department that he headed. He insisted that there was in place, a training committee at the department that looked into the issue contrary to the evidence by the Applicant to the effect that at the time the Training committee was not in place.

The witness explained that the matter was dealt with by the Acting Managing Director and the Board without his knowledge and involvement. He added that this may be where the Applicant got the assumption that her departure had been sanctioned. He said that the Applicant had assumed that she had been granted leave of absence but this was not actually the case. He added that, Looking at the letter dated the 30th August 2001, she may have been entitled to such assumption but the letter was subsequently withdrawn by Mr. Shongwe.

When he was reminded that Mr. Shongwe only purported to withdraw the grant of E35,000 but not the leave of absence, he was a bit evasive stating that the matter had been closed though the letter did not say so.

Mr. Manana added that he only got to know that the Applicant had left for her studies while she was

already in the United Kingdom.

When asked whether he had considered the guarantee for 50% scholarship provided by the husband of the Applicant in response to the letter of the 30th August 2001, he explained that the same was not addressed to him. He however stated that the guarantee was supposed to come from Government. He was however not able to show the court the basis of the requirement.

Mr. Manana said that he did not receive any complaint from M/s Mkhonta, the supervisor of the Applicant to the effect that she had absconded. He wrote to the applicant on the 5th February 2002, five months after she had left regarding her absence. This was in response to the Applicant's query dated the 26th November 2001 on her frozen salary. Mr. Manana explained to the Applicant in the letter that he had not received a copy of the Applicant's letter dated the 20th September 2001 regarding her departure. He said also the Acting Managing Director to whom the letter was written had not informed him of the Applicant's absence. It was for this reason that he had stopped payment of her salary because he did not know where she was. He asked the Applicant to consider returning to Swaziland and curtail her studies as requested by Mr. Shongwe by a letter dated the 10th January 2002 referred to earlier. By this time the Applicant was half way through the course with only six months remaining to complete the same. The effect of the two letters was to advise the Applicant that the assumption that the Board by the Acting Managing Director's Memorandum of 30th August 2001 authorized her to go on study leave was false and unfounded. That was the reason her salary was stopped with effect from November 2001.

She was threatened with dismissal for absenting herself from work for more than (3) days without a justifiable reason in terms of Section 36 (f) of the Employment Act. This was after five (5) months of absence and no communication whatsoever from the Respondent until she wrote the query.

The million dollar question is whether the Respondent in the circumstances had a justifiable reason to terminate the salary, and the employment of the Applicant and if the sanction she was meted was warranted by her conduct. The other vexed question is why the Respondent did not wait for the Applicant to complete her studies and then upon return subject her to a disciplinary hearing in terms of the code in place at the undertaking.

The Applicant has still not received her Master's Degree Certificate inspite that she had successfully completed the course. The college withheld the certificate because she had not fully paid the tuition fees.

Upon her return, she appealed the dismissal to the Acting Managing Director Mr. Shongwe. She appeared before the Board of Directors. They dismissed the appeal and upheld the termination.

She was employed by SASCO in may 2004 and earns a much less salary of E8,800 per month as compared to the E12,151.10 she earned three (3) years prior at the Respondent's employ.

She has been traumatized, suffered joblessness and financial embarrassment. Her endeavour to better

herself proved to be her ruin.

The Applicant maintains that she was treated unfairly and in a discriminatory manner because the Respondent continuously offered scholarships to its staff. While they were on study leave they got paid their salaries. Instead she lost her job, her salary and has not to-date obtained her Degree certificate

Considering the documentary evidence, and the oral testimony of the Applicant and that of Mr.

Manana, was there an agreement between the Applicant and the Respondent for her to proceed on a one year study leave in the United Kingdom to undertake a Master's Degree in Business Administration?

If there was such agreement, did it include a payment of 50% of the costs of the study?

The answer to the two questions will come out of a determination as to whether there was an offer and an acceptance by the parties so as to establish if there was a meeting of the minds to entitle the Applicant not only to demand specific performance but to use the agreement as a sword in the claim for unfair dismissal.

The following issues appear to be factually borne out of the evidence before court;

That the Applicant made an application to the Respondent for a scholarship to study Masters of Business Administration Degree at the Bolton Business School in the United Kingdom.

The course was to take one year and therefore requested leave of absence for the period. The tuition

fees stated in the application form was £6400.

The application was supported by her section head and immediate supervisor M/s Zodwa Mkhonta.

The application was not immediately approved but Mr. Sikelela Qwabe, the Training and Development Coordinator raised three issues as pre-conditions for the approval of the application. These were whether there was a need for the training; who would carry out the duties of the Applicant in her absence, and the availability of finance to cover E64,000 required for the tuition and extra costs of accommodation, meals, traveling and clothing. The officer indicated that the training need analysis was in progress at the time and that the Customer Services Division had to answer the issue of replacement. With regard to the issue of finance, Mr. Qwabe indicated that means to source funding else where may be looked into. This was on the 5th June 2001.

The Applicant on the 7th June 2001 replied to Mr. Qwabe stating that she understood the Respondent had financial constraints and thus she would be happy to be met half way (50%) on the total amount required which was only E64,000 - E70.000. She indicated that she was in the process of arranging for the other 50% through personal loans or from other sources outside SEB. She also indicated that her immediate supervisor was happy to release her and had no difficulties finding her replacement. The supervisor was also satisfied that the MBA would add value to her performance upon return.

This position was indeed confirmed by the supervisor M/s Mkhonta in her letter to Mr. Qwabe dated the 26th July 2001. No further response came from Mr. Qwabe.

Meanwhile the Applicant referred the matter to the Board for further consideration as time was running out. On the 16th August 2001, the Acting Managing Director indicated that the Board had discussed the issue and advised the Applicant to follow the correct grievance procedures in addressing the issue.

Immediately thereafter, however, and specifically on the 30th August 2001 the Acting Managing Director, stated that an appeal for a study funding had been received from the Applicant. He directed the General Manager Human Resources and the Legal Advisor to grant the Applicant E35,000 towards her school fees. That she was to sign an acknowledgement of debt upon the fund being disbursed and that the same would only become payable if she did not complete the course successfully.

As at this point, a clear offer of E35,000 was made to the Applicant towards the business school expenses.

The E35,000 was understood to be, the 50% of the amount requested by the Applicant of E70.000. The Respondent through the Acting Managing Director had accepted the request of the Applicant to pay 50% of her tuition expenses. She had undertaken to find sponsorship for the balance. Her husband in that regard provided a guarantee to the Respondent that he would meet 50% of those expenses and he was already based in the United Kingdom, a fact that was known to the Respondent through M/s Mkhonta, Mr. Manana and Mr. Shongwe.

All that the Applicant had to do was to accept the offer made by Mr. Shongwe.

From the un-controverted evidence, the Applicant upon receipt of the letter dated 30th August 2001 went full speed to conclude the preparations for her departure. She prepared for the hand over to a person already appointed by the Respondent to take over her position during her absence.

She was provided with transport to move her assets from the company house and office. She relocated to Mbabane to ease the arrangements of her travel. All this was unquestioned by the Respondent from the evidence before court.

The Applicant by her conduct had clearly accepted the offer of E35,000 tuition fees. The only condition attached to this payment was that it would be repayable if she failed her programme. It is indisputable that she successfully completed her course.

On the basis of the evidence before court there was clearly in place an agreement that the Applicant was to go for a study leave to the United Kingdom for a period of one year. That the tuition fees quoted by the Applicant was between E64,000 and E70.000 and that the Respondent would pay half of that in the sum of E35,000. The Applicant had undertaken to meet the rest of the expenses.

Although it is indicated that company policy with regard to training of staff included a package of air travel, accommodation, meals and other expenses, this was not offered to the Applicant. To the contrary it would appear that the Applicant was prepared to meet all these expenses, because her husband was already studying in the United Kingdom. This was indeed an added incentive for her study plans but not the sole reason as Mr. Manana would like the court to believe.

We are fortified in the belief that not the entire package was offered to the Applicant from a reading of Mr. Shongwe's letter of the 8th August 2001 wherein he states in the last sentence of the letter as follows:

"This kind gesture is done on the understanding that it will not create any precedent".

The Acting Managing Director appears to have taken into consideration all the special circumstances of this case as presented by the Applicant in her appeal in making the offer as contained in the letter.

The court finds, that a contract was concluded between the parties. There was a clear meeting of the minds on what it entailed. It was only on this basis that the Applicant purchased her air ticket and proceeded to the United Kingdom to commence the studies.

Could the Respondent revoke the contract unilaterally once it had been concluded?

The concept of an agreement by consent or true agreement or a meeting of the minds, or a coincidence of the will, or consensus ad idem (these phrases being inter changeable) is more of a philosophical than a legal concept. See R. H. Christie, The Law of Contract 4th Edition at p.24.

"Although the minds of the parties must come together courts of law can only judge from external facts whether this has or has not occurred. In practice, therefore, it is the manifestation of their wills and not the unexpressed will which is of importance. This is the only practical way in which courts of law can

determine the terms of a contract. Per WesselsJA.

In the context of this case, to determine if the minds of the Applicant and the Respondent had met upon the Applicant's receipt of the letter dated 30th August 2001, we have to look at the external manifestation of their wills in their conduct and expression as contained in the documentation before us. The Applicant had asked for a one year study leave, she had cited a tuition fees of up to E70,000 and had requested to be met half way by the Respondent. The Respondent went ahead and offered E35,000 to her. Relying on this offer she left for the United Kingdom with the hope of returning to her work after one year of study. She knew that this money would be paid to her whilst she was at school and the same would be non refundable provided she passed her exams and obtained her degree.

The Respondent could not renege on this contract unilaterally. All the post contract conditions presented to the Applicant after the conclusion of the Agreement were futile and could not nullify a contract that had lawfully been concluded and acted upon. A party wishing to renege on such an agreement would do so on its own peril. Unfortunately that is the position the Respondent finds itself in.

The Respondent went further, relying on its unlawful breach of the agreement to commit further unlawful and unfair acts against its employee, the Applicant.

In this unlawful expedition, the Respondent stopped the salary of the applicant. It is not in dispute that all employees of the Respondent who went on study leave were entitled to a full salary for the period. This went to their upkeep. The Respondent based its decision solely on the reason that it had not

sanctioned the scholarship of the Applicant. In this it was clearly wrong. A lawful scholarship contract had been concluded between it and the Applicant.

In Wasmult v Jacobs 1987 3 SA 629 (SWA) 633D lew J: said

"It is fundamental to the nature of any offer that it should be certain and definite in terms. It must be firm, that is, made with the intention that when it is accepted it will bind the offeror".

Such was the present case. The offer of E35,000 scholarship was accepted by the Applicant and she proceeded on a one year leave of absence in terms of the application aforesaid.

It is the court's considered view that all the relevant facts were in possession and in the mind of Mr. Shongwe when he wrote the letter of the 30th August 2001. He had the animus contrahendi and the basis of this had been provided in the Applicant's appeal for a scholarship and leave of absence.

Such an offer could only come to an end if not accepted by effluxion of time, if any was fixed for acceptance by the offeror in making his offer. In this case the date of commencement of the study was known to the Respondent and the offer could only have come to an end if the Applicant had failed to proceed with the study leave.

The Applicant did not make any counter offer but continued in earnest to prepare for her trip. She only responded to the un-called for and unlawful retraction of the offer by Mr. Shongwe. Such retraction was of no force and effect because there was no time limit placed within which it could be accepted and

the Respondent was fully aware and took part in the Applicant's preparation for the trip. The offer had been immediately accepted. The scenario is fully presented by the Applicant in her letter to Mr.

Shongwe dated 11th September 2001 and marked exhibit 'VA9' as follows: (The court reiterates its contents)

"FUNDING FOR STUDIES

Following the conversation which took place between myself and the Acting Managing Director on Monday 10th September 2001 at Mbabane, I received the news with great disappointment at the decision taken by the SEB management that that 50% study loan which had been offered earlier on, is again being referred back to the Board of Directors for re-approval. Seeing that I am already left with 4 days to go, referring this issue back to the Board to me seems a continued means to frustrate my efforts till I am left with no other option but to abandon the move.

Under the circumstances, I therefore appeal once again for funding at least a loan to cover my tuition fee and an air fare whilst the Board looks into the issue. Meanwhile, I shall make ways to improvise till the whole issue is sorted out. Your consideration in this regard will be highly appreciated".

Apparently, Mr. Shongwe had verbally informed the Applicant of the repudiation of the agreement to proceed to the United Kingdom on the 10th September 2001. He followed it with the letter marked '7\8' wherein he purported to recall and retract the offer of the 30th August 2001. He stated that he had grossly misunderstood the amount of the fees requested. That the issue had now been clarified by the General manager Human Resources hence the decision to withdraw the offer expressed in his letter of

the 30th August 2001.

As of the date, the Applicant had only four (4) days left to take her trip. She had handed over her position, moved out of the company premises and was only waiting to fly out. It was too late for the respondent to cancel the agreement at this hour. It could not do so lawfully. The offer had long been accepted and it could not unilaterally withdraw it. Such liberty had long been compromised.

All the actions of the Applicant pointed at affirming the agreement in place and non whatsoever can be construed as a repudiation of the same.

The Respondent was in breach. It was bound to pay the E35,000 offered towards tuition, it was bound to allow the Applicant to complete her MBA programme at Bolton University in the United Kingdom; it was bound to continue paying her full salary for one year until her return; it was bound to accept her back to her position or better upon her return.

Instead in a flagrant abuse of its obligation and the law, it stopped payment of the salary as from 30th November 2001. The Respondent proceeded to unlawfully terminate the employment of the Applicant on the 23rd April 2002 in terms of Section 36 (f) of the Employment Act No. 5 of 1980 in that the Applicant had absented herself from work for more than 3 working days without a lawful justification. The respondent persists in such justification for the termination. The court has found, based on the facts of the case, and the legal position herein before postulated that the Respondent has failed to prove on a balance of probabilities or at all that it dismissed the Applicant for a reason provided by Section 36 of

the Act. The dismissal was both unfair and unreasonable in the circumstances of this case. The respondent has thus failed the test placed on it by Section 42 (2) (a) and (b) of the Act.

REMEDY

The Applicant claims reinstatement to her position and in the alternative maximum compensation for unfair dismissal.

In terms of Section 16 (1), reinstatement is the primary remedy provided by the Industrial Relations Act No. 1 of 2000. Such reinstatement is to be with effect from a date not earlier than the date of dismissal. The evidence before the court is that the Applicant successfully completed her MBA programme. The Respondent is in terms of this judgement bound to pay E35,000 towards the tuition fees.

In return the Applicant was to give service with added value to the Respondent. No circumstances satisfactory enough have been placed before court to show the impracticability of reinstating the Applicant. The Applicant had not committed any misconduct. She is now employed by a different employer paying her much less than she previously earned. The court directs that the Respondent reinstates the Applicant forthwith. Such reinstatement is with effect from the 3rd April 2002. The arrear salary payable will be less the monthly salary of E8,800 received by the Applicant from May 2004 to the date of judgement.

In terms of prayer (a), the Respondent is directed to pay an arrear salary of E218,719.80 (Two Hundred

and Eighteen, Seven Hundred and Nineteen Emalangi Eighty Cents) that accrued from the date of stoppage of the salary to the date of the dismissal.

Further, in terms of prayer (b) the Respondent is to pay E35,000 (Thirty Five Thousand Emalangi) being the tuition fees in terms of the Agreement.

The Respondent is to pay the costs of the application in the circumstances of the case.

The members Agree.

NDERI NDUMA

JUDGE PRESIDENT-INDUSTRIAL COURT