

IN THE INDUSTRIAL COURT OF SWAZI LAND

HELD AT MBABANE

CASE NO. 351/2004

In the matter between:

SIMANGALISO MASONDO

Applicant

and

THE SWAZILAND TEACHING SERVICE COMMISSION 1st Respondent

THE ACCOUNTANT GENERAL 2nd Respondent

THE ATTORNEY GENERAL 3rd Respondent

CORAM:

P. R. DUNSEITH : PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

FOR APPLICANT: S. MDLADLA

FOR RESPONDENTS: Z. MKHWANAZI

2.

J U D G E M E N T - 27/09/07

1. The Applicant was employed by the Teaching Service Commission of the Swaziland Government as a teacher. He alleges that in 1997 he was granted a "scholarship study loan" by the Government to enable him to pursue a Bachelor of Business Administration degree at Midrand University in South Africa.

2. He alleges that in 1997 he was granted a "scholarship study loan" by the Government to enable him to pursue a Bachelor of Business Administration degree at Midrand University in South Africa.

3. He says that before he left to his studies he applied to his employer for paid study leave. He never received any response and he assumed that his application had been granted.

4. He never received his salary after his leave commenced. When he enquired, the Government informed him that he had been granted study leave without pay.

5. The Applicant submits that he was entitled to be paid his salary "like every other employee who is on study leave." He asks the court to order the Government to pay him his salary for the period he was on study leave, namely from 1997 to 2000.

6. The Respondents deny that the applicant was granted a "scholarship" study loan. They aver that he was granted an ordinary study loan .which, he is expected repay

7. The study loan agreement itself provides that Government has agreed to advance a loan to the Applicant to enable him to pursue a study course, and repayment of the loan by the Applicant shall be made at such places as the Principal Secretary may direct. There is no reference in the agreement to a scholarship.

8. In so far as the Applicant wants the court to infer that he was granted paid study leave because he was granted a scholarship study loan, such inference cannot be drawn because there is no evidence which indicates that the loan was anything other than an ordinary study loan.

3.

9. The Respondents also deny that the Applicant ever applied for paid study leave. They state that no such application letter exists in their records.

10. The Applicant is unable to produce a copy of the letter, nor has he tendered any other evidence to corroborate that such a letter ever existed. He has given no details as to the date or manner of delivery, or to whom the letter was delivered.

11. The Applicant has failed to prove on a balance of probabilities that he applied for study leave with pay

12. The more significant difficulty with the Applicant's case lies in the provisions of Regulation 12 of the Teaching Service Commission Regulations 1983, which states:

"12. A person in the service shall be entitled to paid study leave if Government has approved such study leave."

13. The Applicant does not allege that paid study leave was approved by the Government. On the contrary, a Memorandum from the Principal Secretary, Education to the Secretary, Scholarship Selection Board dated 4th March 1997 reads as follows:

"This memo services (sic) to confirm that above named teacher has been granted study leave without pay with effect from 1st March 1997 to 31st December 1999."

14. This memorandum may never have come to the notice of the Applicant, but it is evidence that the study leave granted was without pay.

15. The Respondent also points out that the Applicant did not qualify for either a scholarship or paid study leave because his chosen course of study was for his personal advancement and had no relevance to his employment as a teacher and no benefit for his employer. In these circumstances there is no basis upon which it can be argued that the failure to approve paid study leave was inequitable or unreasonable.

16. The Applicant has failed to prove that -he applied.4b for.was granted paid study leave. He has failed to establish any entitlement to paid study leave.

4.

OF THE INDUSTRIAL COURT

17. The Applicant relied upon the unreported judgement of the Swaziland Court of Appeal in the matter of **Phumzile Vilakati v The Principal Secretary, Ministry of Education and Others (Appeal Case No. 25/99)**, wherein the Court of Appeal ordered the Government to pay the salary of a teacher whilst she. was on study leave^The court has read this judgment and is of the view that it does not assist the Applicant, since in that matter the teacher was granted paid study leave to pursue a Bachelor of Education degree on a government scholarship. The facts in the present matter are clearly distinguishable.

18. The application is dismissed with costs.

The members agree

PETER R. DUNSEITH

PRESIDENT OF THE INDUSTRIAL COURT