

# IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 103/2007

In the matter between:

MATHOKOZA GWEBU

1<sup>ST</sup> APPLICANT

PATRICK SIMELANE

2<sup>ND</sup> APPLICANT

and

HEADTEACHER BOYANE PRIMARY SCHOOL

1<sup>ST</sup>

RESPONDENT

CHAIRMAN OF SCHOOL COMMITTEE

BOYANE PRIMARY SCHOOL

2<sup>ND</sup>

RESPONDENT

## CORAM:

P. R. DUNSEITH : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMBER

FOR APPLICANT : P. MSIBI

FOR RESPONDENT : S. ZWANE

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## J U D G E M E N T – 26/04/07

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1. The Applicants were employed by Boyane Primary School as

security guards.

2. On the 2<sup>nd</sup> June 2006 the Headteacher of the school discovered that the school water pump had been stolen.
3. The Applicants had been on duty during the period that the pump was stolen, but they were unable to furnish any explanation as to the theft.
4. The Applicants were invited to attend a meeting of the School Committee on 13<sup>th</sup> June 2006. The Applicants say this was a disciplinary hearing, in which they were questioned at length about this disappearance of the water pump and accused of complicity in the theft. The Applicants say they were told at the conclusion of the hearing that the decision of the meeting would be communicated to them by the Headteacher. The following day, the Headteacher told them that the school administration had decided that they were to be summarily dismissed from work, but they might be reinstated if they produced the water pump.
5. The Respondents have a different version regarding the meeting on 13<sup>th</sup> June 2006. They say that this was a preliminary investigation into the disappearance of the pump, not a disciplinary hearing. No decision to dismiss the Applicant's was taken. The Headteacher denies that she met with the Applicants on the day following the meeting, or that she told them that they were dismissed. She says they disappeared from work after the 13<sup>th</sup> June 2006 for some months, only resurfacing to deliver a copy of their report of dispute to CMAC.

6. It is common cause that the Applicants reported a dispute to CMAC on the 13<sup>th</sup> August 2006 claiming that they had been unfairly dismissed and that following conciliation a written memorandum of agreement was signed by the parties on the 27<sup>th</sup> October 2006. In terms of the agreement, the Respondents agreed to pay each of the Applicants the sum of E6, 474-00 in respect of underpayment of the minimum statutory wage during their employment. It was also agreed that *“Applicants will resume work on 1<sup>st</sup> November 2006 and will be paid according to the wages regulation in their industry.”*
7. The Applicants state that by agreeing to their resuming work, the Respondents were conceding that they had been unfairly dismissed and the Respondents agreed to reinstate them in settlement of the unfair dismissal dispute.
8. The Respondents on the other hand deny that they ever dismissed the Applicants and allege that they simply absconded from work. The Respondents agreed to permit the Applicants to resume working since their employment had never been terminated and the agreement was no more than a condonation of the Applicant's absence without leave.
9. The Applicants duly resumed work, but in 28<sup>th</sup> February 2007 they were suspended pending disciplinary action on charges arising out of the theft of the water pump. Following a disciplinary hearing on 9<sup>th</sup> March 2007, the Applicants were found guilty of gross dishonesty and negligence connected with the theft of the pump, and they were summarily dismissed on 12<sup>th</sup> March 2007.

10. The Applicants have applied to the Industrial court to set aside the disciplinary hearing and the decision of the hearing to dismiss them on the following grounds:

10.1 the Applicants were dismissed for the theft of the water pump on 14<sup>th</sup> June 2006, and they reported a dispute regarding unfair dismissal to CMAC;

10.2 this dispute was resolved by the Applicant's reinstatement in terms of the memorandum of agreement dated 27 October 2006;

10.3 the Respondents compromised their right to dismiss the Applicants on charges arising from the theft of the water pump, and disciplinary action taken against the Applicants in march 2007 constitutes double jeopardy.

11. There is a substantial dispute of fact on the papers before the court as to whether the Applicants were dismissed on 14<sup>th</sup> June 2006 as they allege, or whether they merely absconded from work. If the latter, then the Respondents were not precluded by the memorandum of agreement from instituting disciplinary charges against the Applicants after they resumed work.

12. The court is unable to determine this application without hearing oral evidence to resolve the aforesaid dispute of fact. In the interest of fairness and justice, we make the following order:

- (a) **The application is postponed to a date to be fixed by the Registrar for hearing oral evidence on the question whether the Applicants were summarily dismissed on 14<sup>th</sup> June 2006, or whether they absconded from work from that date.**

The members agree.

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**PETER R. DUNSEITH  
PRESIDENT OF THE INDUSTRIAL COURT**