

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 260/06

In the matter between:

MESHACK DLAMINI & OTHERS

APPLICANT

And

**MINISTER OF AGRICULTURE
& CO-OPERATIVES**

1ST RESPONDENT

**MINISTER OF PUBLIC SERVICE
& INFORMATION**

2ND RESPONDENT

CHATRMAIN, CIVIL SERVICE

3RD RESPONDENT

ATTORNEY GENERAL COMMISSION

4TH RESPONDENT

CORAM:

NKOSINATHI NKONYANE: JUDGE

DAN MANGO: MEMBER

GILBERT NDZINISA: MEMBER

FOR APPLICANTS: W. MKHATSHWA

FOR RESPONDENTS: N. VILAKATI

JUDGEMENT 27.02.08

[1] The applicants are employed as Dip Tank Assistants and are stationed in the various Dip Tanks around the country. They report to and work with Veterinary Assistants at the Dip Tanks.

[2] The applicants are chosen or selected by members of the community. They play a very important role in the Ministry of Agriculture and Co-operatives in the area of detection and prevention of livestock diseases.

[3] On the 10th March 2006 they reported a dispute against the Ministry of Agriculture. In the 'Report of Dispute' Form at paragraph 5.1 the nature of the dispute is stated as "Terms and Conditions of Service". The parties had met prior on the 17th October 2005 to deliberate on this issue of terms and conditions of service of the applicants. In that meeting, under the auspices of the Conciliation Mediation and Arbitration Commission ("CMAC"), the parties reached an agreement in terms of which the Swaziland Government agreed that it would endeavour to address the applicants' grievances by the end of December 2005.

[4] The applicants caused the agreement registered in court as an order of the court. The Swaziland government however failed to put into effect the terms of the agreement and the applicants instituted contempt of court proceedings.

[5] The Court made a ruling on the 15 June 2007 in which it ordered the respondents to arrange a meeting with the applicants within twenty one days of the date of the ruling and address the issues raised in the agreement and to bring the matter to finality within seven days of the first meeting.

[6] The parties did meet on the 6 July 2007 at the Ministry of Agriculture's conference room. In that first meeting the parties agreed to extend the seven days' ultimatum fixed by the court. In that meeting the respondents took the position that the applicants cannot be employed on a permanent and pensionable basis. The applicants were not happy with that decision and have run back to court and are asking the court to find that the respondents are in contempt of court because they have not addressed the issues to "finality" as per the court's ruling.

[7] In court the applicants' argument was based on the idea that by "finality" it meant that the Swaziland Government, as represented by the respondents, was

expected to convert them to permanent and pensionable employees.

[8] It was not clear to the court as to where did the applicants get this idea. It does not appear anywhere in the agreement between the parties that the 1st respondent undertook to have the applicants employed on a permanent and pensionable basis. For clarity's sake the court will reproduce the agreement which appears as follows:-

2. RESOLUTIONS AND AGREEMENT

Having considered each of the above points, the parties reached an agreement as stated below.

2.1. The employment status of DTA's is an issue that is being considered by the Swaziland Government with a view to clarifying their status and possibly including them in the government employment register. A final decision has not yet been reached.

2.2. The DTA's complaints about job descriptions and salary grades have now been addressed. The job descriptions and salary grades have been drafted and copies of these are available.

2.3 The Government of Swaziland will endeavour to give more attention to the issue of health and safety by providing the specified protective clothing, bearing in mind the scarcity of financial resources in government today.

2.4 The Ministry of Agriculture will possibly with the assistance of the Accountant General's or Auditor General's office review the computation of the DTA's backpay ad notch increment, which was fraught with inaccuracies. The DTA's shall make submissions to the Ministry of Agriculture and Co-operatives to provide more information about individual cases.

2.5 The issue of compensation for death and long service is closely linked with the issue of the employment status. Thus, the DTA's compensation package will be addressed once the employment status of the DTA 's has been clarified.

3. TIMEFRAME

The parties agreed that the Government will endeavour to address the applicants' prayers with regard to employment status, protective clothing and backpay by the end of December, 2005."

[9] The question to be decided by the court is whether the Government has "endeavoured" to address the issues that form part of the agreement between the parties. The position of the law is that once failure to comply has been established, willfulness will be inferred and the onus will rest on the respondents to rebut the inference on a balance of probabilities. The inference may be rebutted by evidence establishing that the court's order was not intentionally disobeyed. (See Herbstein & Van Winsen: The Civil Practice of the Supreme Court of South Africa (1997) 4th edition at p.819) On behalf of the respondents it was argued that the Government has addressed these issues.

As regards paragraphs 2.1 and 2.2 of the agreement the court was told that a final decision has been reached in that the applicants were told during the first meeting of 6th July 2007 that the Government will not engage them on a permanent and pensionable basis.

[10] As regards the two paragraphs that appear as 2.3 in the agreement the evidence revealed that the Government has already bought the protective clothing of some of the applicants especially in the Lubombo District. The respondents' attorney did not deny that at present not all the applicants have been supplied with protective clothing, and said that the process was ongoing. It cannot be said therefore that the Government has not "endeavoured" to comply with the court order. As regards the question of overtime, the evidence reveal that those to whom it is due have been paid and those that have not yet been paid were those that were found to have been overpaid. This evidence is contained in affidavit of Elizabeth Matsebula the Principal Accountant in the Ministry of Agriculture and Cooperatives which was not disputed by the applicants in their replying affidavit.

[11] What became clear to the court during the submissions and from

the applicant's heads of argument was that the applicants were not happy on being told that the Government was not going to change their terms and conditions of employment and convert them to permanent and pensionable staff. It is easy for the court to understand their unhappiness. They cannot however pursue that issue in court on the papers as they presently appear. In the present application the applicants want an order that the respondents be held in contempt for failing to comply with a court order. The court order required the respondents to "endeavour" to address the applicants' grievances. From the evidence before court, the court is satisfied that the respondents have "endeavoured" to address the issues in the agreement.

[12] The court is unable to read any of the provisions of the agreement as requiring the Swaziland Government to convert the applicants to the permanent and pensionable staff. From the evidence before the court the respondents have successfully demonstrated that they are not in willful disregard of the court order.

[13] Taking into account all the evidence before the court and all the circumstances of this case, the applicants' application must fail and that is the order that the court makes.

There is no order as to costs.

The members agree.

NKOSINATHI NKONYANE
JUDGE - INDUSTRIAL COURT