

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 78/08**

In the matter between:

**WINILE NOZIPHO DLAMINI**

**APPLICANT**

And

**AZANIA FINANCIAL CONSULTANT**

**(PTY) LTD**

**RESPONDENT**

**CORAM:**

**NKOSINATHINKONYANE**

**:**

**JUDGE**

**DAN MANGO**

**:**

**MEMBER**

**GILBERT NDZINISA**

**:**

**MEMBER**

**FOR APPLICANT**

**:**

**L. SIMELANE**

**FOR RESPONDENT**

**:**

**S. MAMBA**

**RULING 26.03.08**

[1] The applicant brought an urgent application for an urgent application for an order directing the respondent to pay her salary for January 2008 and also that her suspension without pay be set aside. She also applied for an order for costs at attorney and own client scale.

[2] The respondent did not file any answering affidavit but its attorney merely made submissions in court resisting the application.

[3] On the question of costs, the respondent's attorney argued that the court should not make such an order as the respondent had already deposited the applicant's salary into her bank account when the application was instituted on the 28<sup>th</sup> February 2008. The respondent's attorney handed in a document which purports to be evidence of an electronic transaction showing the transfer of funds into the applicant's account.

[4] This documents appears to be a facsimile. It has a date written by longhand being 26<sup>th</sup> February 2008. In print it is written that.

**"Attention: Standard Bank Manzini  
Branch**

**Please debit my account with the following amounts. Salaries for employees for February 2008 Account No. 0140063537501."**

[5] We do not see how this document helps the respondent in this matter. The applicant is asking the court to order the respondent to pay her her salary for January 2008, not her salary for February 2008. The respondent's attorney submitted that the applicant has since been paid her January 2008 salary. This was confirmed by the applicant's attorney.

[6] The evidence before the court shows that the applicant was suspended by the respondent on the 29<sup>th</sup> January 2008 on the allegations that she committed dishonesty, fraud and theft at the Matsapha Branch of the respondent. The letter of suspension is attached to the applicant's application and is marked "A". It is therefore not clear to the court why was the applicant's salary for January 2008 not paid to her on the usual pay day as she had already worked for the month of January 2008 when she was suspended. The applicant was therefore forced by the respondent's unlawful conduct of the withholding her salary to approach the court for its intervention. In light of the respondent's act of deliberately flouting the law, there is no reason why it should not be ordered to pay the applicant's costs on the attorney -client scale.

**(See: DAPHNE DA SILVA V. CAPITOL CATERERS SWAZILAND (PTY)**

**LIMITED (IC) CASE NO.124/2007.)**

[7] On the question of the suspension without pay, the respondent's attorney submitted that the respondent was entitled to suspend the applicant without pay for a period not exceeding one month in terms of **SECTION 39 OF THE EMPLOYMENT ACT OF 1980**. There will however be no need for the court to address this issue as it is now academic because the court was informed that the applicant has already been dismissed and she has already reported a dispute with the Conciliation, Mediation and Arbitration Commission.

[8] Taking into account all the above observations and all the circumstances of this case, the court will make the following order.

**1. The respondent is to pay the costs at attorney-client scale.**

The members agree.

**NKOSINATHI NKONYANE**  
**JUDGE INDUSTRIAL COURT**