

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 83/08**

In the matter between:

**PHUMZILE MAGAGULA**

**APPLICANT**

And

**FIRST NATIONAL BANK**

**SWAZDLAND LIMITED**

**RESPONDENT**

**CORAM:**

**NKOSINATHINKONYANE**

**:**

**JUDGE**

**DAN MANGO**

**:**

**MEMBER**

**GILBERT NDZINISA**

**:**

**MEMBER**

**FOR APPLICANT**

**:**

**M. MBONANE**

**FOR RESPONDENT**

**:**

**P. DLAMINI**

**JUDGEMENT 08.04.08**

[1] This is an application in terms of which the applicant is seeking an order in the following terms:

(a) That a Memorandum of Agreement which was reached by both parties at the Conciliation Mediation and Arbitration Commission on the 19<sup>th</sup> December 2007 be and hereby be made an order of the court in accordance with the

Industrial Relations Act of 2000 as amended.

(b) Costs be awarded against the respondent for both refusing to comply with an agreement it willfully signed at CMAC and for causing these proceedings.

[2] The respondent filed a Notice to oppose and also filed its Answering Affidavit. The applicant did not file a Replying Affidavit to the respondent's Answering Affidavit.

[3] The evidence before the court revealed that the applicant was employed by the respondent on 13<sup>th</sup> January 1997. She was in continuous employment by the respondent until 7 February 2007 when she was dismissed by the respondent. The applicant was charged and found guilty of contravening the respondent's disciplinary code. She appealed against that decision but was unsuccessful.

[4] The applicant then reported a dispute to the Conciliation, Mediation and Arbitration Commission ("CMAC"). At CMAC the parties reached an Agreement in terms of which the respondent agreed to pay the applicant a sum of E1 1,301.59 as additional notice subject to the Commissioner of Tax Directive.

The applicant indeed went to the respondent's Head Office and asked for a form for seeking a tax directive. She later returned on that same day and handed a copy of the tax directive to the respondent's Human Resources Manager which showed that the Income Tax Department would deduct a sum of E3,729.53.

[5] When the parties met at CMAC offices on 19<sup>th</sup> December 2007, the applicant was aware that she would have to pay tax of E3,729.53 from the amount of E1 1,301.59 that she was to receive from the respondent. The applicant was accordingly paid the money due to her less the tax, which is E7,572.06. A copy of the cheque is annexed to the respondent's Answering Affidavit and is marked "P.0.2".

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[6] The applicant did not disclose in her papers that she has since been paid the amount of E7,572.06 in terms of the Memorandum of Agreement entered into by the parties at CMAC offices on 19<sup>th</sup> December 2007.

[7] In terms of prayer (b) of the applicant's Notice of Motion the impression given is that the respondent is refusing to comply with the terms of the Agreement. That however is not correct. The respondent has fully complied with the terms of the Agreement.

[8] The major reason why litigants bring applications for registration of such Agreements reached at CMAC is so that the applicant can lawfully execute. In this case, the respondent having already fully complied with the Agreement, it is not clear to the court why did the applicant bring this application to court.

[9] During submissions the applicant's representative ventured to argue that the applicant was under duress when she signed the Agreement. That is not, however, the case of the applicant on the papers before the court.

[10] It was also argued on behalf of the applicant that it was wrong for the employer to seek a tax directive. The evidence in this case revealed that it was not the respondent who sought a tax directive but it was the applicant herself. If the applicant now thinks it should not have been made to pay tax on the amount, she has a cause of action against the Income Tax Department on a properly motivated application not on this present Notice of Motion where the Income Tax Department has not even been cited.

[11] Taking into account all the evidence before the court, the application will be dismissed.

There is no order for costs.

The members agree.

**NKOSINATHI NKONYANE.**  
**JUDGE - INDUSTRIAL COURT**