

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 39/08

In the matter between:

BONKHELUKHELE

APPLICANT

And

**SWAZILAND DEVELOPMENT
FINANCE CORPORATION**

RESPONDENT

CORAM:

NKOSINATHINKONYANE: JUDGE

DAN MANGO: MEMBER

GILBERT NDZINISA: MEMBER

FOR APPLICANT: S. MNISI

FOR RESPONDENT: Z. JELE

JUDGEMENT ON POINT OF LAW

18.06.08

[1] The applicant applied to this court on an urgent basis for an order;

"1) Dispensing with the Rules of Court in respect of form, manner of service time limits and procedure and dealing with this matter as one of urgency.

2) That a rule nisi do hereby issue and returnable on a date to be fixed by the above Honourable Court calling the respondent to show cause why an order in the following terms should not be made final.

2.1. Directing the respondent to pay the applicant his remuneration for the month of January 2008.

2.2. Directing the respondent to pay the applicant his annual bonus for the year ending December 2007.

3) Granting costs of this application on the scale as between attorney and own client.

4) Granting such further and/or alternative relief."

[2] The application is opposed by the respondent. The respondent has raised a preliminary point and argued that the matter cannot properly be entertained by the court on an urgent basis as the applicant's complaint is that he was not paid his salary for January 2008, yet he is no longer employed by the respondent following his resignation.

[3] The parties agreed that the only issue remaining for the court's determination is that of the salary for the month of January 2008.

[4] Mr. Jele argued that as the applicant has resigned, he is no longer an employee of the respondent. Mr. Mnisi argued to the contrary that, even though the applicant did resign, when he brought the urgent application to the court, he had not yet resigned and asked the court to approach the matter on that basis.

[5] The undisputed facts of this case show that the applicant was an employee of the respondent. He was employed on 2 July 2002 as a Credit Officer. He earned a salary of E10,658:00 per month. On 21 December 2007 he was suspended on allegations of dishonesty and fraud involving an amount of E587,214:48. The

disciplinary hearing was scheduled for 7 January 2008. The hearing did not proceed on that day as the applicant was reportedly sick. In the meantime the applicant tendered a letter of resignation dated 10 February 2008.

[6] It is trite that resignation brings the employment contract to an end from the moment it is accepted by the employer - **(See John Grogan's Workplace Law 8th Edition p.78)**. What was also clear in this matter was that even though the applicant instituted the urgent application when he was still an employee of the respondent, he resigned soon_Aafter and is now not an employee of the respondent. The circumstances have since changed. This is now no longer a case of an employer unlawfully withholding an employee's salary. **(See Graham Rudolph v. Mananga College Case No. 94/20071.C. (Ruling on Points of Law)**.

[7] The applicant is now in no different position from other former employees who are waiting for their cases to be resolved by the court. No good reason was advanced why the court should hear this case ahead of other cases now pending before the court.

[8] Taking into account all the above observations, the point of law raised is accordingly upheld and the application is dismissed. The court makes no order as to costs.

The members agree.

NKOSINATHI NKONYANE
JUDGE - INDUSTRIAL COURT