

# IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 180/08

In the matter between:

**SIMON NHLEBELA t/a C.A.U.**

**Applicant**

and

**LINDIWE MAZIYA**

**1<sup>ST</sup> Respondent**

**CONCILIATION MEDIATION AND ARBITRATION  
COMMISSION**

**2<sup>nd</sup> Respondent**

**CORAM:**

**P. R. DUNSEITH : PRESIDENT**

**JOSIAH YENDE : MEMBER**

**NICHOLAS MANANA : MEMBER**

**FOR APPLICANT : M. SIMELANE**

**FOR 1<sup>ST</sup> RESPONDENT : B. MKOKO**

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**FOR 2<sup>ND</sup> RESPONDENT : A. LUKHELE**

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**J U D G E M E N T – 23/05/08**

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1. The Applicant has applied for an order declaring that a

memorandum of agreement purportedly entered into by the parties at the Conciliation, Mediation & Arbitration Commission has no force and effect, and that the labour dispute between the parties be referred back to conciliation.

2. The 1<sup>st</sup> Respondent filed an opposing affidavit. Mr. Mkojo who appeared for the 1<sup>st</sup> Respondent conceded in court that the affidavit was not attested before a Commissioner of Oaths. The court had grave doubts whether the signature was that of the 1<sup>st</sup> Respondent at all. The attorney who signed as Commissioner of Oaths in the absence of the deponent cannot be identified, otherwise we would refer his misconduct to the Law Society for disciplinary action. We struck out the affidavit on the application of the Applicant.
3. The 2<sup>nd</sup> Respondent CMAC has not filed any papers and abides the decision of the court. In the circumstances, the only facts before the court are those contained in the Applicant's founding affidavit.
4. According to the Applicant, he was invited to attend a conciliation meeting at CMAC offices, Siteki. He requested his attorney Mbuso Simelane to represent him at the conciliation meeting. On the day of the meeting, the Applicant could not find the venue. His attorney attended the conciliation and signed a memorandum of agreement on behalf of the Applicant which purported to settle the dispute. In terms of the agreement, the attorney purported to bind the Applicant to pay E8530-40 in respect of the claimed underpayment of wages and to reinstate the 1<sup>st</sup> Respondent to her employment.

5. The Applicant states on oath that his attorney had no mandate to bind him in this manner, nor had he ever held out by words or conduct that he had authorized the attorney to bind him in his absence to an agreement of settlement. These allegations are not denied.
6. The Applicant testified on oath that his attorney was not authorized and this is confirmed by the attorney in a supporting affidavit. The attorney was mandated to represent the Applicant at a conciliation meeting. This does not constitute a representation of a mandate to enter into a settlement agreement on the Applicant's behalf.
7. The Applicant is not bound by an agreement to which he has never consented. He is entitled to an order declaring the agreement to be without force or effect.
8. On the issue of costs, the application was occasioned by the conduct of the Applicant's attorney, who wrongly held out that he was authorized to enter into the agreement. We do not find any reason why the Applicant should be awarded any costs. The 1<sup>st</sup> Respondent has unnecessarily opposed the application, and her representative has acted in an improper manner by filing an affidavit which he knew was not attested before a Commissioner of Oaths. The 1<sup>st</sup> Respondent is not entitled to any costs in these circumstances. The 2<sup>nd</sup> Respondent has not opposed the application, but it retained an attorney to keep a watching brief on its behalf. The Applicant's attorneys made a tender before the hearing to pay any costs awarded against his client de bonis propriis. We believe he has acted correctly in making this tender.

9. The application is granted and the following order is made:

- (a) The memorandum of agreement dated 13<sup>th</sup> February 2008 purportedly entered into by the Applicant and the 1<sup>st</sup> Respondent is set aside and declared to have no force and effect.
- (b) The dispute between the Applicant and the 1<sup>st</sup> Respondent is referred back to conciliation and the 2<sup>nd</sup> Respondent shall endeavour to resolve the dispute by conciliation within 21 days after the date of this order, subject to the provisions of the Industrial Relations Act 2000 (as amended).
- (c) The costs of the 2<sup>nd</sup> Respondent shall be paid by attorney Mbuso Simelane de bonis propriis. There is no order as to the costs of the Applicant and the 1<sup>st</sup> Respondent.

The members agree.

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