IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE   **CASE NO. 142/09**

In the matter between:

SIMON FUZA SHONGWE   **APPLICANT**

And

**CHIEF FIRE OFFICER OF THE FIRE
AND EMERGENCY SERVICES**   **1ST RESPONDENT**

**THE PRINCIPAL SECRETARY, THE
MINISTRY OF PUBLIC SERVICE AND
INFORMATION**   **2nd RESPONDENT**

THE ATTORNEY GENERAL   **3rd RESPONDENT**

CORAM:

NKOSINATHI NKONYANE DAN   **JUDGE**

MANGO GILBERT NDZINISA   **MEMBER**

                                                      MEMBER

**FOR APPLICANT FOR
RESPONDENTS**   **W. MKHATSHWA B.
                                                     TSABEDZE**

JUDGEMENT 15.04.09

[1]   This is an application brought by the applicant under a certificate of urgency
      for an order in the following terms;

      "1. Dispensing with the rules of the Honourable Court with regards the
          time, manner and form of service and to hear this application as one
          of urgency.

      2.   Directing that a *rule nisi* do hereby issue, returnable on a date to be
            determined by this Honourable Court, calling upon the First and / or
            Second respondent to show cause why;

            a)   The applicant's scheduled compulsory retirement on the 1st
                  April, 2009 should not be restrained pending the finalization
                  of this application.

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b) The First and / Second respondents should not be ordered or compelled to rectify the anomaly in applicant's personal file with regards his date of birth as appears on his birth certificate.

c) The respondents should not be ordered to pay the costs of this application.

3. Granting applicant such further and / or alternative relief as to the Honourable Court may seem meet."

[2] The applicant is a civil servant. He is employed by Government as the Station Commander in the Fire and Emergency Services and is based at Pigg's Peak Fire Station. He was first employed on 1st November 1977. When he was employed he filled in an application for employment form annexure "SG1" hereto, in which he entered his date of birth as being April 1949.

[3] Having entered his date of birth as April 1949, he is now accordingly due to retire as he has reached the compulsory retirement age of sixty years. The applicant is resisting retirement. He is saying the date of birth that he entered when he was first employed was not correct, but was mere guesswork as he was born out of a big illiterate and polygamous family. The applicant says in 2000 he came across a document, on the basis of which he was able to estimate his date of birth and that in terms of this document he must have been born in 1952.

[4] The document referred to by the applicant is annexure "SFS1" being certificate of registration of first payment - which shows that on 4th July 1969 the applicant was 'judged' to be seventeen years old. The applicant says after having come across this document in 2000, he proceeded to the Registrar of Births, Marriages and Deaths to apply for a birth certificate in 2004. After having obtained the birth certificate, the applicant forwarded it to the Fire and Emergency Services Headquarters in Mbabane. The applicant did not furnish the 2nd respondent with the newly obtained birth certificate.

[5] The applicant says that when he forwarded the birth certificate to the Headquarters, he wanted them to attend to the necessary adjustments in his personal file and correct his date of birth. He said he was not aware that it was him who was supposed to present the birth certificate to the 2nd

respondent to effect the amendment of his date of birth. The applicant's case before the court therefore is that taking into account this new information about his date of birth, he is due to retire on 5th December 2012 and not on 1st April 2009 hence the present application that the 1st respondent and / or the 2nd respondent be ordered to rectify the anomaly in the applicant's personal file as regards his date of birth as it appears on his birth certificate.

[7] The respondents are opposed to the applicant's application. The respondents' case is simply that the applicant has reached the compulsory retirement age of sixty and should retire because he gave his date of birth as April 1949 when he was first employed by the Government on 1st November 1977. Secondly, the respondents' argument is that the date of birth of civil servants is regulated by General Order A.635 which provides that Government will accept the date of birth that an officer wrote on first appointment.

[8]   General Order A. 635 provides that:

"Date of Birth That Will Be Acceptable By The Civil Service Board.

An officer's date of birth that will be acceptable by Government as the true date of birth is the date the officer wrote on first appointment If an officer decides to furnish a sworn affidavit, baptismal of birth certificate with the purpose of amending the ordinal date of birth, the Civil Service Board, or Principal Secretary, Ministry of Public Service and Information shall not accept such a certificate when determining his/her retirement."

[9] The rationale behind this General Order is not hard to see. It was meant to curb or prevent the manipulation of dates of birth in order for one to advance or postpone his/her retirement date.
(CF. German Duze Lokothwayo v Principal Secretary for the Ministry of Justice &.Four Others case No. 389/2003,(IC)

[10] The document upon which the applicant relies as most correct in as far as ascertaining his date of birth is however questionable itself. This document is annexure "SFS1". This document was issued to "Mfuza Shongwe". There was no explanation on the papers why the name of the applicant appears in annexure "SFS1" as Mfuza Shongwe and not Fuza Shongwe.

[11] From the documents before the court it seems that not only does the applicant not know his date of birth, he also does not know his names. In annexure **"SG1",** the document that he filled when he was first employed on 1st November 1977, the applicant entered his names Simon Mafuza Shongwe. In annexure **"SG3"** being a staff performance appraisal report, he entered his names as Simon F. Shongwe. In his marriage certificate, annexure **"SG4"** he entered his name as Simon Mafuza Shongwe.

[12] When the applicant filled a staff performance appraisal report for the period "February 2003 to date", he entered his name as Simon M. Shongwe and his date of birth as 5th January 1952. When he went to apply for the birth certificate on 15th September 2004 he entered his name as Simon Fuza Shongwe and his date of birth as 5th December 1952. In February 2003 and 15th September 2004, according to the papers before court, the applicant had discovered annexure **"SFS1"** the document upon which he relies to estimate his correct age. The question that arises is why did he continue to give the two different dates even after he had found the document (annexure **"SFS2")** that helped him figure out his correct age.

[13] Furthermore, when the applicant filled the application form on his first appointment (annexure **"SG1")** he entered his tax identity No. as 1024-02-2002369. The last seven digits are the applicant's employment numbers. Indeed the same numbers appear on the applicant's salary advice slip, annexure **"SF8".** The applicant failed to explain why the tax identity number in annexure **"SFS1"** is different from the tax identity number that he wrote on the date of his first employment in 1977.

[14] Indeed it seems that the document (annexure **"SFS1")** that the applicant relied upon to apply for his birth certificate does not belong to him as that document was issued to Mfuza Shongwe and not the applicant whose name is Simon Fuza Shongwe. Secondly that document has a different tax identity number than the one that appears on annexure **"SG1"** and the applicant's salary advice slip, annexure **"SF8".**

[15] If it were to be accepted that annexure **"SFS1"** belongs to the applicant, that would mean that the applicant has two tax identity documents, a most unlikely event.

[16] The applicant's evidence is simply unbelievable and far fetched. It is the subject of such flat contradiction and evasion that one has the impression of being without a compass in an unchartered sea of falsehood.

[17] Taking into account all the foregoing observations and also all the circumstances of the case, the court comes to the conclusion that the applicant's case has no merit in law and there are equity considerations that could persuade the court to find in his favour. The court will accordingly make the following order;

d)   **The application is dismissed.**
e)   **We make no order as to costs.**

The   mbers agree.

NKbSINATHI NKONYANE
JUD&E'OF THE INDUSTRIAL COURT