



## **IN THE INDUSTRIAL COURT OF SWAZILAND**

**CASE NO.650/2009**

In the matter between:-

**SWAZILAND NATIONAL ASSOCIATION  
OF CIVIL SERVANTS**

Applicant

And

**THE CHAIRMAN OF THE CIVIL  
SERVICE COMMISSION  
THE SWAZILAND GOVERNMENT  
THE ATTORNEY GENERAL**

1<sup>st</sup> Respondent

2<sup>nd</sup> Respondent

3<sup>rd</sup> Respondent

**Neutral citation:** Swaziland National Association of Civil Servants vs The  
Chairman of Civil Service Commission and 2 Others  
(650/2009) [2016] SZIC 1 (2016)

**Coram:** D. MAZIBUKO

(Sitting with A. Nkambule & M.T.E. Mtetwa)  
(Members of the Court)

**Heard:** 2<sup>nd</sup> September 2015

**Delivered:** 4<sup>th</sup> January 2016

*Summary: Labour Law: Applicant applied to Court to appoint a consultant to carry out a job evaluation exercise. Applicant failed to justify the need for the proposed job evaluation exercise. Applicant failed to explain circumstances under which job evaluation should be carried out, models of job evaluation available and components relating thereto.*

*Hearsay evidence; Applicant's witness relies on hearsay evidence in support of its case.*

*Held; hearsay evidence is inadmissible.*

*Opinion; Applicant's witness relies on his lay opinion in his evidence.*

*Held; witness is not an industry expert, his lay opinion is irrelevant and inadmissible.*

## JUDGMENT

1. The Applicant is Swaziland National Association of Civil Servants, a trade union registered in terms of the Industrial Relations Act No. 1/2000 (as amended). The Applicant is recognized by Swaziland

Government as a representative of a majority of unionisable civil servants.

2. The 1<sup>st</sup> Respondent is the Chairman of the Civil Service Commission cited in his official capacity.
3. The 2<sup>nd</sup> Respondent is the Swaziland Government duly represented in legal procedures by the Attorney General who is 3<sup>rd</sup> Respondent.
4. The Applicant has approached the Court by way of Notice of Motion and founding affidavit. The founding affidavit is deposed to by a certain Mr Vincent Dlamini in his capacity as Secretary General of the Applicant. The Applicant has further filed two(2) confirmatory affidavits deposed to by certain Mr Oscar Nkambule and Mr Brighton Mabandla Dhladhla respectively.
5. About the year 2000 the Swaziland Government (2<sup>nd</sup> Respondent) undertook an exercise to do a complete job evaluation for public servants. Government engaged the services of H.T. Dupuis

Consultancy to carry out the exercise. The Dupuis Consultancy worked with the Job Evaluation Committee of the Swaziland Government. This committee is part of a bigger unit within Government called Management Services Division.

6. The Applicant was dissatisfied with the work of the Dupuis Consultancy. The Applicant alleged that the consultancy omitted to evaluate the jobs of Government employees who are deployed at the Central Transport Administration department (hereinafter referred to as CTA). As a result of that omission the said employees lost out at the opportunity to have their jobs upgraded and consequently were denied the economic benefits that they expected – had their jobs been evaluated. Some of their colleagues in other Government departments whose jobs were evaluated did receive certain economic benefits associated with that exercise. As a result the Applicant has applied to Court for relief as follows:

“a) *Directing the Respondents to appoint an independent consultant to carry out a job evaluation and restructuring exercise in respect of civil servants*

*employed under Central Transport Administration  
within 30 days from the grant of this order.*

*b) Cost of application.*

*c) Further and or alternative relief.”*

(Pleadings page 1)

7. The application is opposed. The Respondents’ affidavit is deposed to by a certain Mr Evert Madlopha who is or was the Principal Secretary in the Ministry of Public Service. The Respondents have denied that the employees at the CTA were overlooked in the job evaluation exercise. It became clear to the Court (when reading the affidavits), that the bone of contention between the parties is not; whether or not there was need to include the CTA employees in the job evaluation exercise. The parties differed on the method and technical procedure that should apply when a job evaluation exercise is being carried out.
8. The Court registered its concern with the Applicant’s Counsel (Mr Mkhwanazi) that the matter is fraught with material disputes of fact, and as such it would be proper if it could be brought to Court by way of action so that witnesses, especially expert witnesses may be called

to testify on the issues that are in dispute. There is a technical aspect of the case that requires expert evidence. The Applicant's Counsel was however confident that the matter could still be dealt with on the affidavits.

9. When argument commenced the material disputes of fact became apparent. Counsel for the Applicant asked for leave to lead *viva voce* evidence, of one of the deponents to the confirmatory affidavit viz. Mr Brighton Dhladhla. Counsel for the Respondent (Mr. M. Vilakati) did not object to that proposal, but added that he would also need to lead *viva voce* evidence of a witness of his choice.
10. The general rule is that a litigant must choose a Court procedure that best suits his case, and that once he has made his choice, he is bound by its consequences. The Court is loath to turn applications into trials mainly because the procedures that precede a trial have not been complied with. Compliance with those procedures is mandated by the rules of Court. The Court has a discretion though; whether or not to allow *viva voce* evidence in application proceedings on specific issues.

10.1 Rule 6(17) of the High Court Rules provides as follows”

*“Where an application cannot properly be decided on affidavit, the court may dismiss the application or make such order as to it seems fit with a view to ensuring a just and expeditious decision.”*

10.2 The High Court rules are mutatis mutandis applicable at the Industrial Court as per Rule 28(a) of the Industrial Court Rules, which reads thus

*“where these rules do not make provision for the procedure to be followed in any matter before the court, the High Court Rules shall apply to proceedings before the court with such qualifications, modifications and adaptations as the presiding judge may determine;”*

10.3 *“In Standard Bank of SA Ltd v Neugarten it was held that the hearing of oral evidence remains generally appropriate only where it is found ‘convenient’, where the issues are ‘clearly defined’, the dispute is*

*‘comparatively simple’, and a ‘speedy determination’  
of the dispute is ‘desirable’.*”

HERBSTEIN AND VAN WINSEN: THE CIVIL PRACTICE  
OF THE HIGH OF SOUTH AFRICA, 5<sup>th</sup> edition, Vol 1, 2009,  
Juta, ISBN 978 07021 7933 4 at page 462.

10.4 With the guidance of authorities, including those  
stated above, the Court allowed the parties to lead  
evidence viva voce on specific issues namely:-

10.4.1 the procedure and/or rules that apply when a  
job evaluation exercise is being carried out,

10.4.2 and whether or not the procedure and/ or rules  
were applied in respect to the jobs of the  
Government employees that are based at the  
CTA.

11. On a subsequent date, Counsel for the Applicant introduced his witness  
Mr Mabandla Brighton Dhladhla. Mr Dhladhla testified that he is  
employed by Swaziland Government as a panel beater I based at the  
CTA. He has never worked anywhere else except at the CTA. He stated



that he together with his colleagues at the CTA were omitted from the job evaluation exercise that benefitted most of the Civil Servants.

12. When Mr Dhladhla and his colleagues realised that they have been overlooked for job evaluation, they approached their Head of Department a certain Mr Polycarp Dlamini for assistance. Mr Dlamini allegedly made contact with a certain Mr Evart Madlopha who is or was the Principal Secretary in the Ministry of Public Service and Information. According to Mr Dhladhla, Mr Evart Madlopha made contact with the Civil Service Commission.

- 12.1 According to Mr Dhladhla, Mr Madlopha appeared before the Civil Service Commission and made a presentation on behalf of the employees at CTA. Mr Madlopha allegedly informed the Civil Service Commission that the job evaluation exercise was not done in respect to posts at CTA. However the Applicant did not call Mr Madlopha to confirm the allegation that had been made concerning him. Mr Madlopha refuted

the allegation made by Mr Dhladhla (in his answering affidavit).

12.2 However it soon became noticeable that Mr Dhladhla was giving hearsay evidence. An extract of Mr Dhladhla's evidence where he was examined by his Council reads as follows:

*“AC Now at the meeting with the Civil Service Commission was the Principal Secretary Mr. Madlopha present.*

*A Yes he was present and he was the one giving evidence on behalf of CTA.*

*AC In his evidence, did he advise the Commission that no, no these people were evaluated and there is no need for then [them] to be re-evaluated.*

*A From what I heard, he did not because we were represented by the General Transport Manager Mr. Polycarp Dlamini at the time, but he told us he did mention that we have not been evaluated.”*

(Underlining added)

12.3 It became clear in the course of his evidence that Mr Dhladhla was referring to an allegation which he had heard from another person who is not before Court. Mr Dhladhla has no personal knowledge of the facts in issue. Mr Dhladhla's statement is hearsay and therefore inadmissible.

12.3.1 The general rule is that; hearsay evidence is inadmissible, and that rule applies in this case, and has the support of authority:

*“The principal modern justification is that hearsay evidence is untrustworthy because it cannot be tested by cross-examination. It is not only that the maker of the statement might have been deliberately lying; he may simply have been mistaken owing to deficiencies in his powers of observation or memory, or he may have narrated the facts in a garbled*

*or misleading manner. The purpose of cross-examination is to expose these deficiencies, and if the maker of the statement is not before the court, this safeguard is lost.”*

HOFFMANN LH AND ZEFFERTT DT: THE SOUTH AFRICAN LAW OF EVIDENCE, 4<sup>th</sup> edition, Butterworths, 1988, ISBN 0 409 03325 1 at page 125.

12.3.2 “[Hearsay evidence] ‘is evidence of statements made by persons not called as witnesses which is tendered for the purpose of proving the truth of what is contained in the statement’ per WATERMEYER, J in *Estate de Wet v de Wet*, 1924 CPD 341. Such evidence is not admissible.”

CLASSEN CJ; DICTIONARY OF LEGAL WORDS AND PHRASES, vol 2, Butterworths, 1976, SBN 409 01981 0 at pages 167- 168.

12.3.3 “... hearsay is not admitted. Thus, if a fact is to be proved by oral evidence, it is obvious that the

*evidence must be that of a person who has directly perceived the facts to which he testifies. If something is alleged to have been seen, the evidence must be that of the person who says he saw it; if heard, that of a person who says he heard it; otherwise it would be impossible to test by cross-examination the truth of the testimony, and the law rejects evidence which cannot be tested.”*

SAUNDERS JB: WORDS AND PHRASES LEGALLY  
DEFINED, 2<sup>nd</sup> edition, volume 2, Butterworths, 1969  
SBN 406 08032 1 at page 193.

13. Mr Dhladhla thereafter referred to a letter which is annexure D to the founding affidavit. Annexure D is a memorandum, dated 18<sup>th</sup> August 2008 written by the Executive Secretary to the Civil Service Commission and addressed to the Principal Secretary in the Ministry of Public Works and Transport. According to Mr Dhladhla, annexure D, states inter alia that the aggrieved employees have to be re-evaluated. An extract of Mr Dhladhla’s evidence reads thus:

“AC *I just need to have your comment Mr Dhladhla, if you have got any. On one hand government is saying you were evaluated. On the other hand government is requesting the relevant Ministries to do your re-evaluation. In relation to whether you were evaluated or not, what would be your comment.*

A *My comment would be that we were not evaluated which led to the employer to write a letter like this one. [annexure D].*

AC *Now, if someone were to come from the Management Service Division department to say you were evaluated and you benefitted from the exercise, what would be your reaction.*

A *I would say no, we were not evaluated.*”

(Underlining added)

(Record page 11-12)

14. It would be helpful if annexure D is examined in detail in order to determine whether or not Mr Dhladhla's interpretation is supported by the text. Annexure D is hereby reproduced:

**"MEMORANDUM"**

***From:*** EXECUTIVE SECRETARY  
CIVIL SERVICE COMMISSION

***To:*** PRINCIPAL SECRETARY  
MINISTRY OF PUBLIC WORK  
& TRANSPORT

***Date:*** 18<sup>th</sup> August 2008

***Our Ref.:*** CSC/155

***Your Ref.:***

**RE: NON-EVALUATION OF GRADES FOR CTA-EMPLOYEES**

*The above matter refers to the submissions you made to the Commission on the 13<sup>th</sup> of August 2008. The Commission noted that there were a lot of anomalies with the KPMG report.*

*The Commission deliberated on this matter and thereafter directed that I inform you, as I hereby do, that you should together with the Ministry of Public Service and Information set up a Commission or engage a Consultant that will inquire into the problems caused as a result of the report with a view of finding a final solution to the Job evaluation and restructuring exercise.*

*Your cooperation will be appreciated.*

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***B.M DLAMINI***  
***FOR EXECUTIVE SECRETARY CIVIL SERVICE COMMISSION***

***CC. General Transport Manager"***

(Pleadings page 23)

14.1 In the first paragraph the author is referring to certain submissions which the addressee made before the Civil Service Commission on the 13<sup>th</sup> August 2008. The Court has no knowledge of the contents of the submissions that allegedly were made. However the Civil Service Commission allegedly noted that there were a lot of anomalies with a certain KPMG report which presumably the author and addressee of annexure D had an opportunity to study.

14.2 In the second paragraph the Civil Service Commission issued a directive that the addressee together with the Ministry of Public Service should set up a Commission or engage a Consultant to inquire into the problems caused by the KPMG report and find lasting solutions to the job evaluation and restructuring exercise.

14.3 Annexure D does not say that the jobs of the aggrieved employees at CTA were not evaluated. The letter clearly



refers to anomalies that the Civil Service Commission allegedly noticed in the KPMG report. The details of the alleged anomalies are not before Court. The fact that there were anomalies that were spotted in the KPMG report did not necessarily mean that the requisite job evaluation exercise was not done.

14.4 The author of annexure D, expressed an opinion or suggestion that the anomalies which the Civil Service Commission allegedly spotted in the KPMG report could be addressed by setting up a Commission or engage a consultant to inquire into the alleged problems. That suggestion may be plausible, but it does not mean that it was the only means by which the anomalies in the KPMG report could be resolved.

14.5 Annexure D does not mention that the employees at CTA were omitted in the job evaluation exercise. The allegation that Mr Dhladhla has made in his evidence does not find support in annexure D.

15. Thereafter the Applicant referred to annexure EM1 to the answering affidavit. This document was prepared by KPMG Management Services (Swaziland) PTY Ltd entitled: Job Evaluation Appeals. The attention of the Applicant was drawn to an entry in this document which relates to the post of 'Principal Vehicle Examiner'. Mr Dhladhla was asked whether that post was tenable at CTA and he responded in the negative. Mr Dhladhla's evidence reads thus on this point:

AC Now, there is a document at page 39-40 that is annexed to the Respondent's papers. Can you please have a look at that document. According to the Respondent that is the report of KPMG following the appeals that were lodged. If I may refer you to line 8 from the top where it says NCHO4/91. Do you see that.

A Yes I do.

AC Next to the 91 what is written there.

A Principal Vehicle Examiner

AC Is that post tenable at the CTA.

A No, it's not there."

(Underlining added)

(Record page 12)

16. Mr Dhladhla was asked at length about the post of ‘Principal Vehicle Examiner’ by his Counsel. The purpose of that examination is not clear to the Court since the witness (Mr Dhladhla) had clearly stated that, that post was not tenable at CTA. The application before Court as well as Mr Dhladhla’s evidence was meant to focus solely on the Government employees that are deployed at CTA and the ‘Principal Vehicle Examiner’ is not among them. The Court was not told as to which department (if any) was this post held. The Court considers this portion of Mr Dhladhla’s evidence to be irrelevant. The Applicant’s Counsel has failed to explain the purpose for which this evidence was led.
17. Mr Dhladhla then moved to another item in annexure EM1, namely; the, post of mechanic 1. According to Mr Dhladhla this post is tenable at CTA. There is an entry in annexure EM1 concerning this post and it reads thus:

<i>“Job code</i>	<i>Head/Folio</i>	<i>Job title</i>	<i>Comment</i>	<i>Circ 3</i>	<i>Final grade</i>
<i>MCH00</i>	<i>26</i>	<i>Mechanic 1</i>	<i>Compare with CTA category maintained</i>	<i>A6</i>	<i>A6”</i>

17.1 After reading the above –cited entry in annexure EM1, Mr Dhladhla concluded that the job evaluation exercise was not carried out in respect to Government employees that are deployed at CTA. Mr Dhladhla came to this conclusion after noting that the post of mechanic 1 was paid at grade A6 in terms of circular 3/2014. The grading on that post was submitted to appeal. The final grade (after appeal) is still A6. The grade has not changed despite the appeal hearing.

17.2 According to Mr Dhladhla, his suspicion was bolstered by the comment in the same entry which reads thus:

*‘Compare with CTA category maintained’.*

Mr Dhladhla added that this quotation confirmed that a job evaluation exercise was not carried out in respect to jobs of the Government employees at CTA. Instead, what happened was that the post and grade of a mechanic at CTA was compared with a post and grade of a mechanic

analogous with the CTA one in another institution, and if the two were found to be comparable the grade of the CTA mechanic would be maintained. Mr Dhladhla called this process ‘benchmarking’. He added that ‘benchmarking’ had been used in respect to all the posts that existed at CTA, hence his conclusion that the job evaluation exercise was not carried out at CTA.

17.3 Another reason given by Mr Dhladhla for his aforementioned conclusion was that none of the employees at CTA were interviewed as part of the job evaluation exercise. In other words a job evaluation exercise cannot be completed without interviewing the person whose job is being evaluated. An extract of Mr Dhladhla’s evidence reads as follows:

*“AC Did any person from government or the Management Services Division department visit you for purposes of the exercise, if you recall.*

*A No my lord there is no one who came.*

AC      *Whilst employed at CTA, did consultant come to you as employees for purposes of conducting the evaluation exercise.*

A      *No my lord ever since I was there, there is no one who came.*”

(Underlining added)

(Record page 7)

17.4 Mr Dhladhla’s contention was supported by statements made by the Applicant’s Counsel before Court, for example:

*“Judge So how will the employees that you are bringing help us Mr. Mkhwanazi as opposed to that expert the KPMG people.*

AC      *My lord if someone says he cut my hair and I say he never cut my hair, I am better positioned to explain why I say he never cut my hair. In the same breadth your lordship if the respondents contend that there was an evaluation done in respect of CTA employees, CTA employees are better positioned to say no we were never*

*evaluated, no interviews ever took place, no forms whatsoever.*

(Underlining added)

(Record page 4)

17.5 Under cross examination Mr Dhladhla contradicted his earlier statement and testified as follows:

*“RC So Mr Dhladhla in your examination in chief you told the court that no one came to you during the job evaluation exercise. You in the plural as in CTA employees, no one came to interview you.*

*A Yes I did*

*RC So your evidence is that for a job evaluation exercise to be carried out the individual employees need to be interviewed.*

*A No it's not like that.*

*RC What are you saying Mr. Dhladhla.*

A        I am saying this because I was one of the shop stewards and I sometimes used to ask from our superiors, which I think they were in a better position to know something because it was fell on their job description but they said they did not know anything about it [sic].

RC       *Mr. Dhladhla, our witness Mr. Hlatshwako will come and tell the court that a job evaluation exercise does not involve engaging or interviewing individual employees, but that it involves collecting job information. What do have to say to that.*

A        *I would stand on my words that our superiors would not have said they know nothing about this when they had also reported this to the Principal Secretary.*”

(Underlining added)



(Record pages 22-23)

17.6 In the latter quotation, Mr Dhladhla denied that a job evaluation exercise cannot be completed without an interview of the incumbent of that job. This denial clearly contradicted his earlier statement.

17.7 Furthermore, Mr Dhladhla admitted that he has no personal knowledge of the facts about which he was testifying. He relied on information that he had received from his superiors at work. The alleged superiors did not testify in Court. This portion of Mr Dhladhla's statement, (which is also the basis of the Applicant's case), is hearsay and is inadmissible.

18. Mr Dhladhla has given the Court his opinion on how a job evaluation exercise should be carried out. He stated that a necessary component, is that the person whose job is being evaluated, must be interviewed. Mr Dhladhla stated his opinion as if it is a rule that invariably applies in all cases where a job evaluation exercise is being carried out. After

giving his opinion Mr Dhladhla gave evidence to the effect the alleged necessary component, for instance, the interview, did not take place.

19. The Court has not been apprised (by the Applicant) regarding the methods that are available and the procedures that are applicable in conducting a job evaluation exercise. The Court acknowledges though, that every organised profession or industry has rules and procedures that have to be followed to maintain order and control, to create certainty and predictability and to guide the practitioners in the conduct of business. The following examples may clarify the point:

- 19.1 Attorneys have rules and established procedure that they have to comply with in order to prepare their client's cases for Court, to present those cases before Court and to execute the orders of Court.

- 19.2 Medical doctors also have rules and established procedure that they follow when preparing their patients for medical operation, when they carry out the medical operation and also when rehabilitating the patient after the operation.

It is improper and irregular for a litigant to accuse his adversary in Court of breach of industry rules and procedure but fail to state the rules or procedure that allegedly were breached.

20. The Applicant has failed to bring evidence to show how a job evaluation should be done and whether or not there is more than one lawful way of doing this exercise. The Court has difficulty in accepting Mr Dhladhla's evidence on this point.

20.1 Mr Dhladhla has failed to disclose before Court as to how he came to the conclusion that a job evaluation exercise cannot be concluded without an interview of the person whose job is being evaluated. Mr Dhladhla has testified that he is a panel beater employed at CTA and that is all he had done in his career. Mr Dhladhla stated this position in his evidence as follows:

*“AC Where are you employed.*

*A I am employed at Central Transport Administration.*

*AC Can you tell the court since when have you been employed there.*

A       *Since 1994.*

AC       *In what position are you employed at CTA.*

A       *I am panel beater 1.*

AC       *So in all your employment you have always  
been employed at CTA or you have served  
in any other department.*

A       *Since I began working I worked at CTA.*”

(Underlining added)

(Record pages 5-6)

20.2 Still on the point of skill and expertise, Mr Dhladhla confessed that he had no knowledge of how a job evaluation exercise should be carried out. Under cross examination Mr Dhladhla stated the following:

“RC       *Now Mr. Dhladhla you are not a  
management practitioner. My  
question is that your job does not  
involve job evaluation.*

A       *I can agree.*

RC       *So you don't know how job evaluation  
exercises are carried out.*

A            Yes I don't know.”

(Underling added)

(Record pages 21-22)

20.3 Since Mr Dhladhla has no knowledge of how job evaluation should be carried out, he is not in a position to state in Court that:-

20.3.1 an interview is a necessary component in a job evaluation exercise,

20.3.2 and that the jobs of Government employees who are based at CTA were not evaluated- because the employees were not interviewed by the consultancy. Mr Dhladhla's lay opinion is irrelevant and inadmissible.

20.4 What Mr Dhladhla is trying to do, is to draw a conclusion or give an opinion on a subject which he has neither skill nor knowledge of.

*“A witness, it is said, may depose to the facts which he has observed, but he may not ordinarily state ... opinions founded upon facts of which he has no personal knowledge.”*

20.5 The Court did caution the Applicant's Counsel about the risk of leading a lay witness on a subject that requires expert knowledge. This extract appears from the record which is again reproduced:

*“Judge: So how will the employees that you are bringing help us Mr. Mkhwanazi as opposed to that expert the KPMG people.*

*AC My lord if someone says he cut my hair and I say he never cut my hair, I am better positioned to explain why I say he never cut my hair. In the same breadth your lordship if the respondents contend that there was an evaluation done in respect of CTA employees, CTA employees are better positioned to say no we were never evaluated, no interviews ever took place, no forms whatsoever.”*

(Underlining added)

(Record page 4).

The thinking is that, if a witness says that: his job was not evaluated, that would be the end of the inquiry, there would no need for further evidence and that, that statement should be admitted as absolute truth. That thinking is clearly wrong and untenable.

20.6 Clearly, there was a need for expert evidence on the subject, to assist the Court to ascertain and understand the models or methods that are available in this industry or profession of carrying out a job evaluation exercise. Furthermore, the expert evidence would assist the Court to identify and apply the components that are required when implementing the models.

20.7 The Applicant's decision to refrain from calling an expert witness, was fatal to its case. The Court is not persuaded that a job evaluation exercise was not carried out in respect to jobs at CTA.

21. Mr Dhladhla further referred the Court to annexure Em3. Annexure Em3 is a memorandum written by the Principal Secretary in the Ministry of Works and Transport to his counterpart in the Ministry of Public Service dated 2<sup>nd</sup> November 2009. It reads thus:

**“REVIEW OF CENTRAL TRANSPORT ADMINISTRATION (CTA)**

**GRADES**

*Your Ministry will note that there has been a grievance by the CTA staff that their grades be subjected to a job evaluation as there were anomalies with the then evaluation exercise.*

*The grievance was at some point reported as thus through all the official grievance handling procedures provided for by law, namely CMAC and the Civil Service Commission who deliberated on the matter with all the concerned parties and came to the conclusion that there was need for a review of the job grades for CTA employees as per the attached CSC copy of the directive.*

*At CMAC the parties (the complainants and Government) agreed that the issue did not reconcile and a certificate of unresolved dispute was issued.*

*The Ministry has, therefore, deemed it appropriate to engage your Ministry to review the job descriptions of each job level in order to facilitate the evaluation of all jobs at CTA.*

*Grateful if you would treat this matter with urgency it deserves.*



P.D.NKAMBULE  
PRINCIPAL SECRETARY”

(Pleadings page 49)

22. According to Mr Dhladhla the contents of annexure EM3 indicate or confirm that the Government employees at CTA were overlooked in the job evaluation exercise aforesated. An extract of the Applicant’s evidence reads thus:

“AC      *I just need to have your comment particularly to the paragraph you have read. If it is correct, the assertion by government that you were evaluated. What would be the need for this document[annexure EM3].*

A      *This document was not going to be issued and also even in the contents they do state that we were never evaluated.*”

(Underlining added)

(Record page 18)

The Court has a different interpretation to the contents of annexure EM 3.

- 22.1 In the first paragraph, the author refers to a grievance that was raised by the CTA staff. The CTA staff required that their grades be subjected to a job evaluation as they had noticed anomalies “*with the then evaluation exercise*”. The words in italics clearly indicate that a job evaluation exercise had been carried out and a report had been issued. The CTA staff are challenging what they perceived to be anomalies in a job evaluation exercise that has already been carried out.
- 22.2 The first paragraph in annexure EM3 contradicts the Applicant’s case. The Applicant’s case is that the jobs of Government employees at CTA were not subjected to evaluation. If that were the case, a job evaluation report would not have been issued and the concerned employees would not have been grieved by anomalies in a job evaluation exercise that did not take place.
- 22.3 In the second paragraph, the author states that the grievance was deliberated upon by the concerned parties and stakeholders who “*came to the conclusion that there was need for a review of the job grades for CTA*”

*employees as per the attached CSC copy of the directive”.*

The conclusion that allegedly was reached at that meeting was that there was need to review the job grades for CTA employees. There is no suggestion that a job evaluation exercise was not carried out.

22.4 The Respondent’s witness also talked about the possibility of regrading of posts. He mentioned that the Government employees at CTA or any other Civil Servant can apply for regrading through his head of department. The witness stated as follows under cross examination:

*“AC Maybe so that we don’t waste time here,  
I just need you to confirm for the last  
time that government’s doors are open  
if applicant wants to be re-graded.*

*A Yes I confirm that.”*

(Record page 54)

22.5 The alleged copy of a directive from the Civil Service Commission was not attached to the papers before Court. The Court has no knowledge of its contents.

22.6 At paragraph three (3) there is confirmation that the parties failed to resolve their dispute when they met for conciliation before the Conciliation, Mediation and Arbitration Commission (CMAC).

22.7 In paragraph four (4) the author proposes a review of the job descriptions of each job level so that an evaluation of the affected jobs can commence *de novo*. The author is not making a factual finding that the jobs at CTA were not evaluated. Instead he is making a proposal that would appease the aggrieved employees by offering them a chance to have their jobs evaluated afresh after a review of the job descriptions. In the mind of the author, the anomalies that were spotted in the earlier job evaluation exercise could be addressed in a subsequent job evaluation exercise. The author is therefore proposing a second job evaluation exercise since the first one is allegedly fraught with anomalies.

22.8 Contrary to what Mr Dhladhla has stated in his evidence, the Court is unable to find a clause in the contents of annexure EM3 which states that the jobs of employees at CTA were never evaluated. The author in annexure EM3 is confirming exactly the opposite of what Mr Dhladhla has stated in his evidence.

23. The Respondent led its only witness- in evidence Mr Bathandwa Emmanuel Hlatshwayo. Mr Hlatshwayo is employed by Swaziland Government since the year 2001, in the Ministry of Public Service, particularly in the Management Service Division (hereinafter referred to as MSD). The MSD incorporates a unit known as the 'Job Evaluation Committee'. One of the functions of the MSD is to undertake evaluation of jobs within the Civil Service. The MSD assisted the Dupius Consultancy in carrying out the job evaluation exercise of Government employees between the years 2001 and 2003. Mr Hlatshwayo was in the team that worked with the Dupius Consultancy. A report was thereafter issued.

24. The Dupius report was submitted for discussion in a Joint Negotiation Forum which included the Applicant, Government, other trade unions and interested parties. There were grievances raised by certain Government employees against the contents of the Dupius report. In order to address those concerns Government engaged another consultancy firm named Eastern and Southern Africa Management Institution (hereinafter referred to as ESAMI). Esami was engaged mainly to scrutinize and review the work that the Dupius Consultancy had done with emphasis on the areas where grievances had been raised. According to Mr Dhladhla the grievances had been raised by Government employees who were stationed at CTA, whose interest is represented by the Applicant.

25. In the process of carrying out its mandate ESAMI carried out a job evaluation exercise afresh on the aggrieved Government employees. Mr Hlatshwayo's evidence on this point reads thus:

“RC So ESAMI did a job evaluation.

A Yes, [they] did a job evaluation, [on] the results that came out of Dupurs [Dupius] Report where they found that there were some discrepancies.”

(Underlining added)  
(Record page 40)

When its work was complete, ESAMI issued a report. That report was published by Government as Establishment Circular No 3/2004. Circular No.3/2004 was the final document that was issued on the job evaluation exercise.

26. There were grievances that were raised against circular No.3/2004 by certain Government employees particular those represented by the Applicant. Again a Joint Negotiation Forum was convened to look at and into those grievances. The Joint Negotiation Forum invited the aggrieved parties to convey their grievances by way of an appeal. It was resolved that another consultancy firm should be appointed to hear and determine the appeals and Government then Commissioned KPMG Management Services to carry out that exercise. The result of the appeal process was published by Government as Establishment Circular No.1/2007.

27. Mr Hlatshwayo explained a job evaluation exercise as follows:

“A      *A job evaluation is a process that determines the worth of a job. It has many factors that are involved.*

RC      *So what are the components involved.*

A      *By determining the worth of that job it depends on what model that particular consultant is using. So the basic components you will find that there is point rating systems, there is benchmarking. You find that there is packing order, so that’s why there are many components in the job evaluation process.*

RC      *Which model was used in the job evaluation exercise for civil servants.*

A      *Dupurs [Dupius] used the Hay and Peterson model. That model[-] Hay uses the job grade ranking and Peterson has the point rankings and the benchmarking. So it was combination of these two models.”*

(Underlining added)

(Record pages 41-42)



The Court has noted that the Applicant did not deny this evidence.

28. Mr Hlatshwayo has introduced two (2) models of a job evaluation process, namely – the Hay and also the Peterson model. The Dupius consultancy integrated these two (2) models when they evaluated jobs for the Civil Service (including those of the Government employees who are based at CTA). Mr Hlatshwayo added that certain permissible components in a job evaluation exercise include; benchmarking, point rating and packing order. Mr Dhladhla talked about ‘benchmarking’, in his evidence, as if it is an element that is incongruous to a job evaluation exercise – without stating reasons in support of his theory. Mr Dhladhla failed to state why was it irregular or improper for the Dupius Consultancy to incorporate inter alia, the component of ‘benchmarking’ when it evaluated the jobs of Government employees who are based at CTA. Clearly Mr Dhladhla testified out of ignorance and inexperience on the subject of job evaluation. His evidence did not advance the Applicant’s case.

29. Mr Dhladhla was clearly shaken under cross examination and he conceded that he had no knowledge of how job evaluation is done. On the other hand, the evidence of Mr Hlatshwayo was cogent and was not challenged under cross examination.

30. The Court is accordingly persuaded that the following facts are supported by the evidence, viz: -

30.1 that there is more than one (1) model of a job evaluation exercise that is recognized in the industry or profession, and

30.2 that ‘benchmarking’ is a permissible component in a job evaluation exercise, and

30.3 that ‘benchmarking’ was among the components that were utilized by the Dupius Consultancy when evaluating the jobs of the Government employees who are based at CTA.

31. Mr Hlatshwayo then explained how the concept – job evaluation, and the component – ‘benchmarking’ works. He further reiterated that the

positions of Government employees at CTA were evaluated. His evidence reads thus:

31.1 “RC Now Mr. Hlatshwako it was suggested yesterday by the applicant’s witness that they were not evaluated, they were benchmarked. What would you say to that.”

...

“RC What would you say to someone who says I was not evaluated because you did not come to me. You did not come [to me] and [the] people who are similarly situated.

...

A I would say that is false ... We evaluate positions not people. So if that position was in there, it was evaluated.

RC Mr. Hlatshwako we are taking [talking] about the CTA in particular, are the positions at CTA exclusive to the CTA.

A No.

RC So how are they.

A     *They are all in other government Ministries. So they are generic, if I may put it like that.*

RC    *Just for emphasis Mr. Hlatshwako, were the positions at the CTA evaluated.*

A     *Yes.*”

(Underlining added)

(Record pages 43-44)

31.2   Mr Hlatshwayo stressed the point by stating the following:

“RC   *Mr. Hlatshwayo were any positions, anywhere in the civil service left out in the evaluation exercise.*

A     *No, every post was evaluated.*

RC    *How were the salary grades structured before the evaluation exercise.*

A     *There[They] used to be a unitary pay case, like numerical.*

RC    *Please explain what do you mean by numerical pay case structure.*

A     *The grades were numerical, like 1 -19.*

RC    *What is pay structure like presently.*

A     *Now we are using the categorised pay structure A up to F.*

RC    *What brought that about.*

A     *It's through the Dupurs[Dupius] evaluation where they changed the pay structure into the categorised system of pay.*

RC    *You say Dupurs[Dupius] changed that, are there any positions that [fell out of] the categorised pay structure.*

A     *No civil service position is outside the categorised pay structure.*

RC    *Why is that.*

A     *Because as a result of the evaluations every position fell into the categorised pay structure.*

RC    *Does that include the CTA.*

A     *Yes."*

*(Underlining added)*

(Record pages 47 -48)

32. From the evidence of the Respondent the Court can conclude that, in order to evaluate a job, it is not necessary to interview the incumbent of that job. It is not the person that is being evaluated, but the job. The jobs at CTA were evaluated even though the employees who serve in those jobs were not interviewed. The Court has noted that the Applicant did not challenge the evidence of Mr Hlatshwayo when he explained the principle and the related components. Mr Hlatshwayo's evidence on the subject before Court was detailed, clear and sound.
33. In this case, the Applicant has the burden of proof and has failed to discharge that burden.

*“Burden of Proof [onus probandi]. The most prominent canon of evidence is, that the point in issue is to be proved by the party who asserts the affirmative... . The burden of proof lies on the person who has to support his case by proof of a fact which is peculiarly within his own knowledge, or of which he is supposed to be cognizant.”*

AGGS W.H.: WHARTON'S LAW LEXICON 11<sup>th</sup> edition, 1911,  
Stevens and Sons, (no ISBN) at page 135.

34. The Applicant has failed to persuade the Court that the positions of Government employees at CTA were not evaluated, and that was the crux of the Applicant's case. On the contrary, the Respondent demonstrated with evidence that the requisite job evaluation exercise was carried out. The application fails for this reason as well.
35. The general rule is that costs follow the event. The Applicant must have realised, (before launching the application), the nature of evidence that was required to prove their case. The Applicant must have further realised the risk of launching application proceedings in a case where material disputes of fact were foreseeable. Fairness requires that the Respondent be compensated in costs.
36. Wherefore the Court orders as follows:
  - 36.1 The application is dismissed.
  - 36.2 The Applicant is to pay the costs of suit.

The members agreed.

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D. MAZIBUKO.  
INDUSTRIAL COURT JUDGE

Applicant's Attorney:        Mr. M. Mkhwanazi  
   Mkhwanazi Attorneys

Respondent Attorney:        Mr. M. Vilakati  
   Attorney General's Chambers