

**IN THE INDUSTRIAL COURT OF ESWATINI**

HELD AT MBABANE

Case No. 352/20B

In the matter between:-

**MNCEDISI BRIAN MYENI**

APPLICANT

**And**

**TRUWORTHS SWAZILAND PROPRIETARY  
LIMITED**

1<sup>st</sup> RESPONDENT

**ESW ATINI REVENUE AUTHORITY**

2<sup>nd</sup> RESPONDENT

**Neutral citation:** Mncedisi Brian Myeni v Truwmihs Swaziland Proprietary Ltd  
and Another (352/20B) [2021] SZIC 102 (10 December 2021)

**Coram:** **THWALA - JUDGE**

(Sitting with Mr M. Mthethwa and Mr A.M. Nkambule,  
Nominated Members of the Comi)

**Heard:** 28 OCTOBER 2021.

**Delivered:** 10 DECEMBER 2021.

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## JUDGEMENT

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1. These proceedings represent yet another barrage of frivolous applications that have been launched by the Applicant, through and/ or with the assistance of Mr Mabuza. Indeed it is regrettable that despite being cautioned on several occasions, Mr Mabuza, however failed to heed the advice.
2. The result of which are the present proceedings in which Applicant is now seeking for an order, firstly, directing the Respondent to pay back the sum of E20, 860.00, being monies that were deducted as a tax directive from the arbitration award granted to the Applicant for unfair dismissal. The second order sought is to direct that the sum of E20, 860.00, claimed be paid to Applicant's representative's personal bank account which is held with Eswatini Development and Savings Bank.
3. For their part, Respondents filed comprehensive sets of opposing affidavits in which they set-out the background of the case, including the various stages which it had traversed, noticeably at the instance of the Applicant. Respondents proceeded even further to raise certain points of Law which they argued that they were well placed to dispose of the matter. These points of law were: *res iudicata* and misjoinder.

4. We prefer to say nothing as pertaining to Respondents' two points *in limine*, preferring instead, to address Applicant's relief as couched in his papers. In prayer 1 of his notice of application, Applicant is seeking for an order directing the Respondents to pay to him the sum of E20, 860.00, being monies that were withheld and subsequently remitted to the Second Respondent as tax. In the course of the hearing of the case, two issues then emerged and deserves our mention, viz: the fact that Mr Mabuza had deliberately initiated these proceedings whilst fully aware of the fact that there was a deed of settlement that the parties signed at Manzini on the 26 June 2020.
5. The said deed of settlement is "**Annexure AA2**" which is annexed to First Respondent's answering affidavit. Evident therefrom is the fact that same was entered into by the parties as a deliberate replacement of the arbitration award that was awarded in favour of Applicant by the Conciliation Mediation and Arbitration Commission (CMAC) on the 27 May 2020.
6. Perhaps the most important aspect of this deed of settlement, for purposes of our ruling, is clause 5, as to payment, which provides as follows:

**"The Respondent agrees to pay the Applicant the settlement amount of E39, 000.00, less any applicable statutory deductions to be paid into the Applicant's bank account which is to be confirmed by the Applicant. Payment to be effected by Monday, 29 June 2020 by close of business subject to receipt of a tax directive and (sic) from Swaziland Revenue Authority".**

Underlining is ours.

7. It was in accordance with the above clause 5 of the aforesaid deed of settlement that on the 31 July 2020, Applicant received payment of the sum of E26, 130.00, which was the E39, 000.00, settlement amount less the tax deduction of E1 2, 870.00.
8. In his papers, Applicant appears to be now attempting to resile from the parties' deed of settlement of the 26 June 2020, and revert instead, back to the arbitration award issued by CMAC in his favour under CMAC Case Number SWMZ 088/19. Applicant's aforesaid action is fraudulent and does amount to a deliberate abuse of comi process. Through the issue of this application, Applicant has compelled Respondents to appear before Court in order to contest this frivolous claim. That this litigation is frivolous is borne out by the fact that Applicant accepted the pay-out from the First Respondent, which pay-out was **"in full and final settlement of all disputes and / or claims of any nature whatsoever which in any way relate to or pertain to the Applicant's employment with the Truworths Group and / or the termination thereof, and all of the Applicant's particular claims including but not limited to the case under reference number SWMZ 088/19"**. (Per clause 3 of the parties' deed of settlement).
9. In the case of **Price Waterhouse Coopers Inc and Others v National Potato Co-operative Ltd 2004 (6) SA 66 ( SCA)**, the Comi had occasion to deal in detail with the relevant authorities on this subject-

*" [50] .....It has long been recognized in South Africa that a court is entitled to protect itself and others against the abuse of its process ( see Western Assurance Co v Caldwell's Trustee 1918 AD 262 at 271; .....but no all-embracing definition of abuse of process has been formulated. Frivolous or vexatious litigation has*

*been held to be an abuse of process ( per Innes CJ in Western Assurance v Caldwell's Trustee (supra) at 271.....it has been said that 'an attempt made to use .for ulterior purposes 111achine1:J1 devised for the better administration of justice' would constitute an abuse of the process..... In general, legal process is used properly when it is invoked for the vindication of rights or the e1 force111ent of just claims and it is abused when it is diverted Ji-om its true course so as to serve extortion or oppression; ....."* Per Southwood AJ A.

10. On the basis of the above legal authorities it is clear that Applicant has instituted these present proceedings with the intent of using the process of this Court in order to extort a second payment from the First Respondent. This was mala fide and a blatant abuse of process.

11. Even if Applicant's claim did not amount to an abuse of process, still he would have been non- suited by the caveat subscriptor rule. As it has long been held that-

**"When man is asked to put his signature to a document he cannot fail to realise that he is called upon to signify, by doing so, his assent to whatever words appear above his signature". Per Fagan CJ in George v Fairmead (Pty) Ltd 1958 (2) SA 465 (A) at 472 A. See also Keens Group Co (Pty) Ltd v Lottar 1989 (1) SA 585 (c) at 589 B-J.**

12. It is clear that not only did Applicant append his signature upon the deed of settlement, but that he further proceeded to accept, without any protest, on the 31

August 2020, the deposit of the sum of E26, 130.00, into his personal account. As Innes CJ put it in **Burger v Central South African Railways 1903 TS 571:**

**"It is a sound principle of law that a man, when he signs a contract, is taken to be bound by the ordinary meaning and effect of the words which appear over his signature". At 571.**

13. This is so because:

**"The function of a signature is to signify that the writing to which it pertains accords with the intention of the signatory. It conveys an attestation by the person signing of his approval and authority for what is contained in the document; and that it emanates from him". Per Hoexter JA in Jurgens and Others v Volkskas Bank Ltd 1993 (1) SA 214 (A) at 220 E-F.**

The foregoing principle of our law applies not only when the person **signing studies the document but also when he appends his signature carelessly or recklessly ....In such circumstances the person signing can be considered as taking the risk"** (See Kerr 'The Principles of the Law of Contract' 5<sup>th</sup> Ed., Butterworths. Page 98).

14. In conclusion, we note and record with regret, Mr Mabuza's continued disregard for the previous orders that have been issued by this Court regarding this matter. It would appear that the institution of each set of the proceedings was nothing but fraudulent.

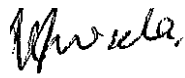
15. We therefore order as follows:

12.1 That, Applicant's application is dismissed with costs in favour of both the Respondents.

12.2 The costs granted herein are to be taxed as at Attorney and own client scale.

12.3 Counsel for the First Respondent is directed to update this Comi regarding the satisfaction of the order of this Comi against Mr Mabuza of the 28 April 2021

The Members Agree.



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**M.M. THWALA**

**JUDGE OF THE INDUSTRIAL COURT OF ESWATINI**

For Applicant

Mr S.M. Mabuza

For 1<sup>st</sup> Respondent

: Mr M. Mntungwa

For 2<sup>nd</sup> Respondent

: Ms G.Mabuza