



IN THE INDUSTRIAL COURT OF ESWATINI

CASE NO.187/2018

In the matter between:-

JLENJO C. DLAMINI

1st Applicant

JP'lfULIP GWEBU

2^m A

JfEREIVIAH MAGAGULA

applicant 3rd

SJ!BUSISO MBATHA

Applicant 4th

Applicant

And

MINISTRY OF NATURAL RESOURCES

1st Respondent

JVHISTRY OF PUBLIC SERVICE

2nd Respondent

1fHE CIVIL SERVICE

3rd Respondent

COMMISSION ATTORNEY-

4th Respondent

GENERAL

Neutral citation: *Lenjo C. Dlamini and Three Others vs Ministry of Natural Resources and Others 187/2018 SZIC 21 (3 P¹ lvfarch, 2021)*

Coram:

N.NKONY ANE, J

(Sitting with G. Ndzinisa and S. Mvubu Members of the Court)

Mvubu

Nominated

Heard submissions: 12/02/2021

Judgement delivered: 31/03 2021

JUDGEMENT.

1. This is an application that was instituted by the Applicants against the 1st - 3rd Respondents. The 4th Respondent is cited herein in his nominal capacity as the legal representative of all Government Departments and Ministries. No order is sought against the 4th Respondent.

2. The Applicants are seeking an order in the following terms;
 - "a) *Salary scales be reviewed and upgraded to a scale above their subordinates.*

 - b) *Back payment of the underpayments from the year 2013 as calculated in annexure "B" herein.*

 - c) *Costs of suit.*

 - d) *Any further and/or alternative relief"*

3. In terms of Annexure 'B' the alleged underpayments were calculated as follows:
- | | |
|----------------------|--------------|
| 1. Lenjo C. Dlamini | E630, 814.28 |
| 2. Phillip Gwebu | E640, 264.24 |
| 3. Jeremiah Magagula | E544, 516.98 |
| 4. Sibusiso Mbatha | E256, 819.50 |
4. The 1st Applicant has since passed away. There are therefore now only three Applicants before the Comt.
5. The Applicants' application is opposed by the Respondents and a Reply was duly filed on their behalf by the 4th Respondent. The Applicants thereafter filed their Replication.
6. The dispute between the parties was reported to the Conciliation, Mediation and Arbitration Commission (CMAC). The parties failed to resolve the dispute by conciliation and a certificate of unresolved dispute was issued by the Commission on the basis of which the Applicants approached the Comt.
7. The facts of this application are largely common cause. The facts revealed that the Applicants, at the time that the dispute arose, were holding the positions of Clerk of Works. Each of them was stationed in one of the four

regions of the country. In the regions they worked with other civil servants from the various ministries of the Government. This was in line with the Government's policy of decentralization.

11. In relation to the Ministry of Natural Resources, the Applicants' duties were to oversee the use and availability of water to the communities and to coordinate and supervise subordinate employees. Below the Clerk of Works was the Community Development Officer; Assistant Community Development Officer; Inspector of Works; Foreman; Technicians; Artisans; Builders and Plumbers.
9. During the period of 2013, the Ministry of Natural Resources changed the job titles and salary grades of the Community Development Officers and the Assistant Community Development Officers to Water Analyst and Assistant Water Analyst respectively. The salary grade changed from C4 to E2 for the Water Analyst and the Assistant Analyst changed from BS to CS. The Applicants remained on grade CS. These changes were the genesis of the dispute that is now before the Court.
10. The Applicants felt aggrieved that the people who reported to them were earning more than them. The Applicants as Clerks of Work were now

earnings a salary equivalent to that of the Assistant Water Analyst. The Applicants felt that the 1st Respondent's conduct amounted to an unfair labour practice. The Applicants are now entreating the Court to review the salary grades in a manner that would have them placed on a higher grade than the Water Analysts.

11. An opportunity presented itself in 2015 when a salary review exercise was commissioned by the Government. (See page 3 of Bundle "A"). This exercise culminated in the production of Establishment Circular Number 1 of 2016. (See page 30 of Bundle "A"). This circular did not change the 2013 position. The Circular therefore did not resolve the Applicants' grievance.
12. The Applicants thereafter lodged an appeal. The matter took a long time to be addressed and the Applicants withdrew their appeal and reported the matter to CMAC as a dispute. The dispute could not be resolved amicably between the parties at CMAC, hence the Applicants filed the present application before the Court.
13. The Respondents' defence to the Applicants' application is that there was no unfair labour practice in the circumstances of this case. The Respondents' argument is that the Applicants are making a wrong comparison of job titles and duties for completely different cadres. It was further argued on behalf of

the Respondents that the changes were justified as they were a result of a detailed scientific job evaluation.

14. It was not in dispute that through the changes in job titles and grades first occurred in 2013, they were not changed by the Salary Review exercise of 2016/17. Aggrieved parties were afforded the opportunity to appeal. The Applicants did file an appeal. The Appeals were provided for under Article 6 of Establishment Circular Number 1 of 2016. That Article provides that;

"6. Appeals

- 6.1 *Through the salary review exercise, Government has taken all precautions to ensure that the exercise is done scientifically, taking into account the principles of the Paterson System of Job Evaluation. However, should there be a valid reason to appeal such appeals should be submitted in writing through the responsible Principal Secretary or Executive Leader. The process to be followed is that the appeals should be submitted within a period of 30 working days fi'om the date of issuance of the Circular. An appeal will only be considered based on the following grounds:*

- 6.1.1 *Additional information that the Salary Review exercise did not consider whereas this information was available at the time of the job evaluation.*
- 6.1.2 *On substantial proof of change in the scope of the job.*
- 6.2 *No appeals from individual officers will be considered unless submitted and endorsed by the relevant Principal Secretaries or Executive Leaders.*
- 6.3 *No appeals based on comparative job evaluation outcome of jobs that are not within the same job family will qualify for review. "*

15. As already pointed out in the preceding paragraph, the Applicants did comply with Article 6 by filing an appeal. It would appear that the appeal was received as there was no evidence that it was rejected by the officials leading the Salary Review exercise. The Salary Review exercise having provided for redress for aggrieved employees, that internal process ought to be followed and exhausted by all aggrieved parties before the matter is brought to the Court.

16. The Applicants conceded before the Court that they did not get any outcome after they had lodged the appeal. The Applicants told the Court that they felt that the matter was dragging and they decided to withdraw the appeal and report the matter to CMAC as a dispute.
17. The evidence showed that the grievance arose in 2013 when the job evaluation of the Water Analysts and Assistant Water Analysts was conducted. The Applicants raised a grievance with the 2nd and 3rd Respondents in 2014. (See Paragraph 17 of the Applicants' Application). The issues giving rise to the dispute were addressed by the Salary Review exercise in 2016. The Applicants were not satisfied with the outcome and they lodged an appeal.
18. The Applicants felt that the appeal process was taking too long to be finalized and they decided to abandon the process and report the matter to CMAC as a dispute.
19. The view of the Court is that if there are laid down rules or procedures of resolving disputes, they ought to be adhered to by all the parties involved. There was no evidence that the appeal process provided for in Article 6 of The Establishment Circular Number 10 of 2016 is failing to carry out its mandate or is refusing to entertain the Applicants' appeal. All that the

Applicants are telling the Court is that the appeal process is slow. The Applicants are simply inconvenienced by the delay of the appeal process. We do not agree with the Applicants that convenience should be allowed to take precedence over the laid down internal procedures.

20. The Applicants failed to state any substantial reason why they did not wait for the appeal process to be exhausted except that the process is sluggish. In an almost similar matter where the parties failed to follow the dispute resolution process this Court pointed out the following on page 5;

"Before the Industrial Court, unlike at the High Court, an Applicant bears a further onus of showing why, he did not follow the laid down dispute procedures in Part VIII of the Industrial Relations Act No. 1 of 2000. In particular, Rule 3(2) of the Rules of the Industrial Court reads as follows;

'3(2) the Court may not take cognizance of any dispute which has not been reported or dealt with in accordance with Part VIII of the Act. "

(See: Phylip Nhlengethwa & Others v Swaziland Electricity Board, case no. 272/02 (IC).)

21. Similarly, in the present case, there is a laid down appeal process in terms of Article 6 of the Establishment Circular No. 1 of 2016 which the Applicants had to follow. It is the policy of the Industrial Relations Act that before a dispute is ventilated before the Industrial Court, the internal dispute resolution mechanisms should have been exhausted. (See: **Swaziland Fruit Canners (Pty) Ltd v Phillip. Vilalrnti & Two Others, case number 2296/1997 (H.C).**)
22. In casu, there is no doubt from the evidence before the Court that the Applicants were simply impatient and did not find it necessary to allow the appeal process to be finalized. There was no evidence before the Court that this was a case where it was justified that convenience should take precedence over the laid down internal procedures stipulated by the Circular.
23. Whether the Applicants' salary scales should be reviewed and upgraded is a matter that should first be determined by the Salary Review Exercise Appeals panel. Presently, the Court cannot entertain any of the prayers sought by the Applicants as that would be to pre-empt the decision of the Appeals panel.
24. In the circumstances of this case, and taking into account all the foregoing observations, it is proper that this matter first be dealt with by the rightful

forum, that is, the Appeals panel in terms of Article 6 of the Establishment Circular Number 1 of 2016. The Court will accordingly make the following order:

- a) *The Applicants' application is dismissed as it is prematurely before the Court.*
- b) *The dispute is referred back to the parties to have it first dealt with and finalised internally through the Appeals procedures provided for by Article 6 of the Establishment Circular Number 1 of 2016 within a period of three months.*
- c) *There is no order as to costs.*

25. The members agree.

JUDGE OF THE INDUSTRIAL COURT OF ESWATINI

For Applicants: *Mr. G.S.Dlamini*
(Nfagagula Attorneys)

For Respondents: *Air. V J..lanana*
(The Attorney-General's Chambers)