

**IN THE INDUSTRIAL COURT OF ESWATINI**

**Case No.168/21**

In the matter between:

**ERNEST MAVUSO**

Applicant

**AND**

**MONENI PIRATES FOOTBALL CLUB**

Respondent

**Neutral Citation:**

Ernest Mavuso vs Moneni Pirates Football Club  
[168/2021] SZIC 52 [2021]

**CORAM:**

**K. MANZINI-ACTING JUDGE**  
*(Sitting with Ms. N Dlamini and Mr. S. Mvubu)*  
*(Nominated Members of the Court)*

**DATE HEARD**

: 10 JUNE 2021

**DATE DELIVERED**

: 7 JULY 2021

## **SUMMARY**

**LABOUR LAW:** - Applicant seeks an order directing the Respondent to pay him arrear wages in terms of a fixed term contract which was valid from 17<sup>th</sup> November, 2020 to 30<sup>th</sup> April, 2021. Respondent was properly served with the Notice of Motion, but does not file a Notice to Oppose, nor an Answering Affidavit. Applicant sought and was granted on an ex parte hearing of the application.

**HELD:** - Applicant's evidence uncontroverted- Owing to Respondent's failure to oppose and to attend court proceedings to state its side of the case, and thereby discharge its burden of proof- Application accordingly granted

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## **JUDGEMENT**

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### **NATURE OF APPLICATION.**

[1] This is an application for an order directing the Respondent to effect payment of all arrear wages in terms of the Employment Contract between the parties. The application is unopposed following that the Respondent failed to file a Notice to Oppose despite proper service, and further did not make an Appearance in Court.

## **THE PARTIES**

- [2] The Applicant herein is Ernest Mavuso, an adult Liswati male, and resident of Kwaluseni, Matsapha, within the Manzini Region.
- [3] The Respondent is Moneni Pirates Football Club, a *universitas* with the capacity to see and be sued in own name, and duly registered in terms of the Laws of Eswatini. The Respondent's registered offices at Enguleni Building within the City of Manzini, Manzini Region.

## **Background**

- [4] The Applicant instituted these proceedings on the 24<sup>th</sup> of May, 2021 in this Court. The Respondent was served with the Notice of Motion on the 27<sup>th</sup> of May, 2021, in terms of which it was called upon to appear before Court on Thursday, the 3<sup>rd</sup> of June, 2021. It was further advised that it should file with the Registrar of this Honorable Court a Notice of Intention to Oppose, and serve same upon the Applicant's Attorneys within ten (10) days of receipt of the application. The Respondent was further advised that having filed the Notice to Oppose, it was required in terms of the Law to file an Answering Affidavit before the lapse of ten (10) days. It was also made known to the Respondent in the Notice of Motion that whether it filed the Notice of Intention to oppose or not, this application would proceed to be made on Thursday, 3<sup>rd</sup> June, 2021 at 0930 hours, or soon thereafter.
- [5] The Respondent did not appear on the appointed date ( 3<sup>rd</sup> June, 2021), and it is evident from the Return of Service, served by one Musa Sukati, who

describes himself as a Deputy Sheriff for the Manzini Region, duly appointed in terms of **Section 4(1) of the Sheriff's Act 17 of 1902.**

[6] The Applicant's representative was granted leave to lead the oral evidence of the Applicant in the Ex parte trial, after the Court satisfied itself that the Court process was properly served upon the Respondent. The Respondent was at all times aware of this matter, but chose not to oppose the proceedings, and further did not attend Court in order to present it's side of the events that led to the Applicant's claim.

[7] The Applicant's Notice of Motion contained the following prayers:-

(i) Ordering and directing the Respondent to pay the Applicant fully the arrear wages from the date when the parties agreed to the employment contract, that is from the 17<sup>th</sup> of November, 2020 to 30<sup>th</sup> April, 2021.

(ii) Ordering and directing the Respondent to pay the Applicant wages when they become due.

(iii) That the Applicant be granted any further and/or alternative relief.

[8] The Applicant, at the Court proceedings gave oral testimony, over and above the Founding Affidavit to which he deposed which is attached to the Notice of Motion. The Applicant testified under oath that he is a Teacher by profession, as well as a Football Coach. It was the Applicant's testimony that he is a resident of Kwaluseni, Matsapha within the Manzini Region. He explained that he is a married man who supports his dependant parents, as

well as his wife and children.

- [9] The testimony of the Applicant was that he was employed in the month of November, 2020 as Head Coach for the Respondent. He referred to annexure "WNI" of the Founding Affidavit, which is the contract of Employment. He explained that in terms of this agreement he was entitled to a monthly salary of Ten Thousand Emalangi (E10, 000.00) with a monthly training allowance of Eight Hundred Emalangi (E800.00). He stated that he was also entitled to travelling allowances which constitute of One Hundred and Fifty Emalangi (E150.00) for local games, and Three Hundred Emalangi (E300.00) for away games.
- [10] The Applicant stated that contrary to the terms of their agreement, the Respondent had not paid him his salary throughout the duration of the employment. He stated that the only monies he had received from the Respondent was an amount of Eight Thousand Emalangi (E8, 000.00) on the 20<sup>th</sup> May 2021, but he was not told what exactly it was for. He stated that he was handed a brown envelope which contained the said sum in cash by the General Manager of the Team, Mr. Brian Magagula. He pointed out that this amount was not the equivalent of his monthly salary as per the contract.
- [11] The Applicants testimony was further that the Respondent had terminated his employment by virtue of a letter which he submitted as part of his evidence, and it was marked "EMI". The said letter of termination which was dated the 4<sup>th</sup> of June 2021 reads as follows:-

*"Mr. Ernest Mavuso*

*P.O. Box*

*Matsapha*

*Dear Sir,*

*· RE: TERMINATION OF SERVICES*

*The above subject matter herein refers;*

- 1. Following the ongoing Court case in the Industrial Court of Eswatini, case No. 168/21 which is between yourself and Moneni Pirates Football Club of which your Lawyers served us a Notice of Motion to that effect. We have noted that, you have never engaged the Management Committee to inform them of any concerns/ discomfort.*
- 2. Due to the fact that the matter is now in Court, we have resolved that your services with us be terminated with immediate effect. We are in the view that we don't escalate more costs as the months succeed subsequently.*
- 3. We will soon engage with your Lawyers and come up with a good plan in liquidating whatever amount we realize is due to yourselves.*
- 4. Thank you for your past efforts during your stay at Moneni Pirates Football Club, and we are wishing you all the best in your future endeavours.*

*Yours Faithfully*

*Mr. B. Magagula*

*(General Manager)"*

### **Analysis of Evidence and Applicable Law**

[12] The evidence presented at the hearing, and which was deposed to by way of affidavit to the Court clearly demonstrates that the Applicant was at all material times, an employee to whom the protection offered by **Section 35 of the Employment Act, No. 5 of 1980 (as amended)** applied.

[13] It is further the case that the Applicant has satisfactorily discharged the onus resting on him to prove his claim against the Respondent. It is also clear that the Respondent herein was at all material times aware of the Court proceedings, and opted not to appear in Court to state its own case. This is further evidenced by the contents of the letter of termination handed in by the Applicant as part of his evidence. The evidence as presented by the Applicant herein went uncontroverted, and he was able to show that the Respondent failed to pay him his salary in terms of the Contract of Employment. In the premises the Court has reached the conclusion that he is entitled to the relief sought in terms of the Notice of Motion, as well as his own oral testimony in Court.

### **ORDER OF THE COURT**


[14] The Court therefore makes an order in the following terms:-

- (i) The Respondent is ordered to pay the Applicant all arrear wages from the date of the commencement of the contract of Employment being; 17<sup>th</sup>

November, 2020, up to the end of the said contract.

(ii) The Respondent is :further ordered to pay to the Applicant wages when they are due.

The members agree:



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**K.MANZINI**

**ACTING JUDGE INDUSTRIAL COURT**

*FOR APPLICANT:* Mr. M. Tsabedze

(V.Z. Dlamini Attorneys)

*FOR RESPONDENT:* No Appearance