

IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO.32/99

HELD AT MBABANE

IN THE MATTER BETWEEN:

SANDILE MDZINISO APPELLANT

AND

THE ATTORNEY GENERAL OF THE

KINGDOM OF SWAZILAND RESPONDENT

BEFORE

BROWDE J.A.

VAN DEN HEEVER J.A.

SHEARER J.A.

JUDGMENT

SHEARER J. A.

The appellant was the unsuccessful applicant in proceedings designed to obtain judgment against the respondent for the sum of E137,453.45 and interest thereon at the rate of 9% per month a tempore morae.

The allegations upon which the appellant relied were as follows:

1. On the 1st October 1985 he was appointed Commissioner of Police. In his capacity as such he was entitled to the use of a Government vehicle and to an entertainment allowance of E150.00 per month;

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2. On the 28th February 1994 his appointment was varied to Ambassador "with all personal rights to Grade 18", and thereafter to Ms present position as Under Secretary in the Ministry of Health and Social Welfare.

3. On the 11th August 1992 a Circular headed "Confidential and Restrictive Circulation" emanated from the Acting Principal Secretary of the Ministry of Labour and Public Service dealing with a "transport re-imbursive allowance for Principal Secretaries and Heads of Departments on salary grades 26 and above", in terms of which he is "entitled to receive a monthly allowance for his use of Ms private motor vehicle for official duty with Swaziland at the sum of E2198,04 per month"

The Circular in question was attached but its relevance is obscure. It refers to "Principal Secretaries and Heads of Departments," The appellant is an Under Secretary on "Grade 18"

4. On the 8th December, 1998 a memorandum from the Principal Secretary, Ministry of Public Service and Information recording that, inter alia, the Commissioner of Police

"whose transport re-imbursive and entertainment allowances were stopped following the variation of their appointment, should be re-instated with effect from the date they ceased to receive them and any amount that remained unpaid to date be re-imbursed without delay"

5. That memorandum was withdrawn in another dated 24th December, 1998, emanating from the same sources.
6. Hence, so the appellant contends, he is entitled to the payment of E128, 253 in respect of a transport re-imbursive allowance and E8 700-00 in respect of entertainment allowance.

In Ms replying Affidavit the appellant denies that he "was appointed as Ambassador" as "there is no legal instrument appointing me as Ambassador and thereafter removing me from the said position" - a contention which is at variance with Ms founding affidavit.

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There is no basis for the appellant's contentions. As the learned Chief Justice found in the Court below " the Applicant has not established a contractual or legislative basis for his claim", since the memoranda relied upon do not constitute contractual documents in terms of which he obtained a right to the amounts claimed. He also correctly found that the pronouncements by the Principal Secretaries "are not decisive, nor are they evidence of the terms of applicant's contract with the government"

I can find no fault with this reasoning. In my judgment this appeal is ill-founded and must be dismissed with costs.

SHEARER. J.A.

I agree BROWDE. J.A.

I agree VAN DEN HEEVEI, J. A.

Delivered in open Court this . .3th.....day of December 1999