



**IN THE CONCILIATION, MEDIATION & ARBITRATION  
COMMISSION (CMAC)**

**HELD AT MBABANE**

**MB 143/06**

In the matter between:-

**MGADLELA T. DLAMINI**

APPLICANT

And

**THE MINISTRY OF EDUCATION  
& 4 OTHERS**

RESPONDENT

CORAM:

**Arbitrator**

: Ms K. Manzini

**For Applicant**

: Mr. Aubrey Sibiya

**For Respondent**

: Ms Khulile Sikhondze

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**ARBITRATION AWARD**

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**DATE OF ARBITRATION:** 19<sup>th</sup> September 2006

**VENUE** : CMAC Offices, 1<sup>st</sup> Floor,  
Mbabane House

## **1. PARTIES AND HEARING:**

The Applicant in this matter is Mr. Mgadlela T. Dlamini, an adult Swazi male of P.O. Box 1378, Mbabane. He shall be referred to herein as the Applicant, the employee, or simply as Mr. Dlamini.

## **2. ISSUES IN DISPUTE**

This matter relates to the alleged unfair labour practice which was perpetrated by the Respondent's against the Applicant. The matter related to the Applicant's claim that he is uncertain about his employment status and wishes the employer to clear up this uncertainty. The Applicant contended that he was employed to work as a cook, and the Respondent denied this, and said that he was employed as a labourer.

## **3. BACKGROUND INFORMATION**

The Applicant reported a dispute to the Commission in terms of Section 76 and Section 77 of the Industrial Relations Act, 2000 (as amended), and this report was made on the 1<sup>st</sup> of March, 2006. An attempt was made to settle the dispute between the parties amicably through the process of conciliation, but this effort was not successful, hence a certificate of unresolved dispute was issued (Certificate number 259/06).

The dispute was then referred to arbitration, and I was appointed as arbitrator on the 30<sup>th</sup> of May, 2006. The matter was set down for a pre - arbitration meeting on the 27<sup>th</sup> of June, 2006, and was to be heard on the 30<sup>th</sup> of July, 2006. The matter did not proceed on this day as the Applicant's representative did not turn up for the hearing, and the matter was further postponed to the 29<sup>th</sup> of August, 2006. The Applicant's representative did not attend the hearing on this date either, and the matter was then set down for the 19<sup>th</sup> of September, 2006, and the Applicant was warned that the matter would either be dismissed, or would be heard in the absence of his representative on this day, should his representative further fail to make an appearance.

The Respondent in this matter are the Ministry of Education, Swaziland College of Technology, the Civil Service Board, The Ministry of Public Service and Information and also the Attorney General. These shall hereinafter be referred to collectively as the Respondents or the employer.

#### 4. **REPRESENTATION**

Mr. Dlamini was represented by Mr. Aubrey Sibiya, from the Swaziland National Association of Civil

Servants. The Respondents on the other hand, were represented by Ms Khulile Sikhondze, an attorney from the Attorney General's Chambers.

## **SURVEY OF EVIDENCE AND ARGUMENTS**

### **THE APPLICANT'S CASE.**

The Applicant was the only witness who was called upon to testify under oath at these proceedings. Mr. Dlamini testified that he had been employed by the Swaziland Government to work as a labourer at the Swaziland College of Technology, on the 1<sup>st</sup> of July, 1999, and he submitted a letter to this effect. This letter was admitted as part of his evidence, and it was labeled "MD1".

Mr. Dlamini further stated that he had been posted to work in the Catering department, and worked under the instruction of a Mr. Sacolo, and a Ms Sibandze who taught him how to cook, and to operate the machinery in the kitchen. Mr. Dlamini stated that his duties entailed, amongst other things, to make sandwiches for his superiors on a daily basis, to assist students with preparing ingredients for their practicals, and also to keep the keys to the storeroom.

The Applicant stated that he had worked well in this position, up until he received a letter from the Executive Officer at SCOT, a Ms N.S. Dlamini. This letter was varying his terms of appointment, from a temporary status, to a probationary status.

According to the witness about three weeks later, he was summoned by Ms Dlamini to the Vice Principal's office. Mr. Dlamini stated that when he reached the office, he was confronted by Ms Dlamini herself, a Ms Thandiwe Mavuso (the Principal's secretary), and also the Indvuna (Supervisor), Mr. Sifundza.

Mr. Dlamini stated that he had been asked by Mr. Sifundza to return the letter that varied his terms of employment, as it had been given to him erroneously. The reasons advanced by Mr. Sifundza were that he should not have been employed before a certain Mr. Thulani Simelane who had arrived at the college before he did. According to Mr. Dlamini, Ms Dlamini had confirmed what was said by Mr. Sifundza. The witness stated that he had told them that he would return the letter once he had spoken to the Principal. Mr. Dlamini stated that he had then written to the Principal, and had through a letter dated the 27<sup>th</sup> of May, 2005, enquired about his employment status. This letter was admitted as part of the Applicant's evidence,

and labelled "M.D.3". Mr. Dlamini stated that the Principal had asked the Executive Officer, Ms N.S. Dlamini for advice on the matter but had not received a response to his queries. Mr. Dlamini stated that Ms Dlamini, had merely told him that his issue was a difficult one, and had not explained the complications involved. The witness then stated that he had approached the clerical officer, Mr. Vusi Mamba to help him with his problem, and Mr. Mamba had spoken to Ms N.S. Dlamini. Ms Dlamini had apparently told Mr. Mamba that she had been told by Mr. Dvuba, the Vice Principal, that as long as he was employed in his current position, the Applicant would never be employed, because he had been implicated in the theft of paint.

Mr. Dlamini stated that he had later received a letter from the Ministry of Education, and written by Ms N.S. Dlamini, dated the 11<sup>th</sup> of December, 2005. The letter had the effect of varying his appointment from the position of labourer, on a temporary basis, to the position of dishwasher, on grade A 1, on probationary terms. This variation was to take place with effect from the 1<sup>st</sup> of January, 2006. The letter was admitted as part of the Applicant's evidence, and labelled "MD.5 (i)".

Mr. Dlamini stated that he took this letter to the Matron at the kitchen, and she had turned him away, because she had not been sent a copy of the said letter. Mr. Dlamini testified that he had gone back to the Executive Officer, Ms N.S. Dlamini, who had taken him to see a Mrs Thwala, and on Mrs Thwala's instruction, a second letter was drafted, and a copy sent to the Matron, and the letter was admitted, as part of the Applicant's evidence and labelled "M.D.5 (ii)."

The Applicant stated that he had returned to the Matron at the College, and she had told him to go and speak to the Principal. The witness testified that the Principal had asked him who had employed him? The Applicant had apparently informed the Principal that the appointment had been made by the Executive Officer, Ms N.S. Dlamini, on the instructions of Mr. Nhlanhla Dlamini, who is the Principal Personnel Officer. Mr. Dlamini stated that the Principal had told him to go back to the people who had employed him, as he knew nothing about his appointment.

The Applicant told the Commission that Mr. Sukati, the Principal, had told him to go and work in the catering department, and not the kitchen as dictated by the letter of appointment. The Applicant stated that on the other hand, he had been told by the Indvuna, Mr.

Sifundza to go and cut grass, and this further complicated his position as he was not clear on his work status, and his duties.

Mr. Dlamini also testified that he had then approached the Workers' Committee at the college to seek clarification from Mrs Dlamini, the Executive Officer on what he should do as he was not welcome at the kitchen where she had posted him to. Mr. Dlamini stated that she had told him and the members of the committee that he should continue to clock into work on time, and clock out, at the end of the day until he was assigned duties at the kitchens. Mr. Dlamini submitted minutes of the meeting with the Executive Officer, and these were admitted as part of his evidence, and labelled "MD.4". Mr. Dlamini stated that he had then had occasion to speak with the Principal Personnel Officer (P.P.O.) at the Ministry of Education, after he had continued to clock in and out, and not perform any duties for sometime. Mr. Dlamini stated that he had met with the Principal Personnel Officer in the month of August, 2006, and he had told him that he was aware that Mr. Dlamini's salary was about to be stopped as he was said not to be doing any work. The Applicant stated that he had informed the Principal Personnel Officer that he had clocked in and out at work, and was awaiting to be assigned duties at the



kitchen. Mr. Dlamini stated that he had informed the Principal Personal Officer, that he had been doing this on the strength of advice given to him by Ms N.S. Dlamini, the executive Officer. Mr. Dlamini testified that he had been advised by the Principal Personnel Officer to go back to the College and assume any duties that were assigned to him, whilst he pursued his dispute with CMAC. Mr. Dlamini stated that he had complied with the Principal Personnel Officer's advice, and had been cutting grass.

Mr. Dlamini testified that he had recently applied for leave, as he needed to go home, to attend to his parental homestead which had incurred serious damage during the recent storms. The Applicant testified that the application had been approved by Mr. Sifundza, the indvuna, but Mr. Gule had refused to approve the application, because he felt that he was not entitled to leave as he did not perform any duties.

Mr. Dlamini stated that he felt very frustrated at work, as his work life was very unpleasant because of the bad blood that existed between himself and his superiors. Mr. Dlamini testified that he had also applied for an advance on his salary, and this too, had been turned down. The Applicant testified that his prayers on the dispute before the arbitration were that he get clarity

on his work status, and also that he be transferred to another educational facility, as he was ill at ease at SCOT due to the bad working relationship with his bosses.

### **THE RESPONDENTS' CASE**

After the Applicant had closed his case, the Respondent's representative had asked for an adjournment in order to consult with her clients. After the adjournment, Ms Sikhondze stated that, having heard the Applicant's evidence, her clients had decided not to pursue their defence, and conceded to the claims of the Applicant. Ms Sikhondze stated that the Respondents' were willing to accede to the Applicant's all his prayers, and in the following manner;

- (i) The work status of the Applicant is to be that as stated in the letter of the 14<sup>th</sup> of December, 2005, and he was to assume the position of Dishwasher, on the terms stated therein.
- (ii) The appointment of the Applicant was to take effect pending his ultimate transfer from the College.

### **THE AWARD**

Having heard the submissions of both parties, I hereby issue an order in the following terms:-

(i) The Applicant is to assume the position of dishwasher, as stated in the letter of appointment, dated the 14<sup>th</sup> of December, 2005. The Applicant's variation will be on the same terms as stated in the letter, and his salary is to be calculated on Grade A1, and he is to be paid any arrear salary payments, as from the 1<sup>st</sup> of January, 2006, if they do exist.

(iii) The Respondent is to arrange that the Applicant be transferred to another work station, at another educational facility, other than the Swaziland College of Technology.

**THUS DONE AND SIGNED BY ME ON THE .....  
DAY OF OCTOBER, 2006.**

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**KHONTAPHI MANZINI  
ARBITRATOR**