



**CONCILIATION, MEDIATION AND ARBITRATION
COMMISSION (CMAC)**

Held at Manzini

SWMZ 157/09

In the arbitration matter between: -

TSAKASILE SHONGWE

Applicant

AND

MRS NCEDI SUKATI

Respondent

ARBITRATION AWARD-EX PARTE

DATE OF ARBITRATION: 24th July 2009

CORAM:

ARBITRATOR : Commissioner B.Ngcamphalala

FOR APPLICANT : Represented Herself

FOR RESPONDENT : No Appearance

1. DETAILS OF THE PARTIES

- 1.1 This matter was heard on the 24th July 2009 at the Conciliation, Mediation and Arbitration Commissions offices (herein referred to as CMAC or Commission), situated at SNAT Building Manzini in the Manzini district).
- 1.2 The Applicant is Ms. Tsakasile Shongwe an adult Swazi female of P. O. Box 120 Mpaka. I shall refer to the Applicant as the Applicant or Employee.
- 1.3 The Respondent is Ms Ncedi Sukati of P. O. Box 29 Manzini. I shall refer to the Respondent as the Respondent or the Employer.

2. REPRESENTATION

- 2.1 During the Arbitration hearing the Applicant represented herself. On the other hand there was no appearance by the Respondent nor did anyone appear on her behalf.

3. BACKGROUND FACTS OF DISPUTE

- 3.1 On 21st April 2009, the Applicant reported a dispute at the Commission's offices in Manzini. The nature of the dispute was recorded as unpaid wages. The dispute is said to have first arisen on the 3rd June 2008, it being alleged by the Applicant that the Respondent was refusing and or failing to pay her the balance of her salary amounting to E800.00.
- 3.2 The Commission then appointed a Commissioner Thulani Dlamini to conciliate the dispute, however the dispute was certified as unresolved. A Certificate of Unresolved Dispute was subsequently issued, certifying the dispute unresolved.
- 3.3 In terms of the Certificate of unresolved dispute, the following issue(s) were recorded as being in dispute:
- a) Notice pay
 - b) Underpayments
 - c) Maximum compensation for unfair dismissal
- 3.4 As a consequence of the dispute remaining unresolved, the parties requested that the matter be referred to arbitration in terms of Section 85(3) of the Industrial Relations Act 2000(as amended). I was accordingly

appointed arbitrator on the 5th June 2009.

3.5 A pre-arbitration meeting was held on 2nd July 2009. On the said date both parties were present, and it was agreed that the issues in dispute was the balance of E800.00 being in respect of unpaid wages. It was further agreed by the parties that any documents to be used as evidence would be exchanged on the date of the hearing.

4. ISSUES TO DETERMINE

4.1 The issue before me that I must determine is whether or not the Applicant is owed the balance of E800.00, being in respect of the remaining balance on wages due to the Applicant between the periods of the 22nd December 2007 to July 2008. The Applicant indicated that this was the only issue in dispute and not the rest as indicated in the certificate

5. SUMMARY OF EVIDENCE

5.1 The Applicant was the only party in attendance, the Respondent was not in attendance, of note is that the matter was scheduled for the 24th July at 8:30am. On the day it was scheduled no indication was received from the Respondent that she was running late or that she could

not be in attendance.

5.2 An agreement to postpone the matter had been signed by the parties and it had been by consent that the matter was scheduled for the 24th July 2009. Satisfied that the Respondent was aware the matter was proceeding, I waited for 45 minutes for the Respondent. At 9:15am I called the Respondent's name three times, she had still not arrived and I proceeded to attend to the Applicant who applied that the matter be heard ex -parte.

5.3 I proceeded to hear the matter and completed it as the Applicant was the only one to make submissions in support of her case. At 12 noon I was advised that the Respondent was present and was requesting to see me. She then advised that she had developed car troubles and had requested someone to advise me of her circumstances; however she was told that I was not to be disturbed as I was in a meeting.

5.4 I advised her that the matter had been heard and completed, and that she would have to wait for the arbitration award to know which step she would take. I shall now proceed with the evidence adduced by the Applicant.

THE APPLICANTS CASE

- 5.5 The Applicant in her opening submissions stated that she began to work for the Respondent on the 22nd December 2007, as a Cashier, earning a monthly salary of E700.00. She stated that in January 2008 she did not receive her salary, further that in February of the same year she was not paid, however she requested the Respondent for money as her sister had lost her job, which was given to her by the Respondent amounting to E400.00. She proceeded to state that in March 2008, she received a further E400.00 from the Respondent, and in April E300.00.
- 5.6 She submitted that in May 2008 she was told by the Respondent that she had sold the business and was paid E200.00, by the Respondent. It was her evidence that she continued to work and was not paid in June 2008 and in July she received E1, 400.00 and a balance of E800.00 remained unpaid by the Respondent. She submitted that she prayed that she be paid the balance of 800.00, which the Respondent was refusing to pay.
- 5.7 The Respondent was not present during the Arbitration hearing as earlier stated so no evidence was adduced on her behalf.

5.8 The Applicant was the only one to give evidence in support of her case. She testified under oath that she was owed a sum of E800.00 by the Respondent which the Respondent was now refusing to pay her. She testified that the reason given by the Respondent for refusing to pay her , is that the Respondent alleged that she (Applicant) had stolen goods whilst under her employ.

5.9 She went on to state how she would always account to the Respondent for all moneys received and never at any time did she steal from the Respondent. Her testimony was that the Respondent should have reported her to the police if she suspected that she was stealing from her.

5.10 In closing it was her submission that she prayed that she be awarded the sum of E800.00, owed to her by the Respondent. She indicated that she would not be calling any further witnesses.

6. ANALYSIS OF THE EVIDENCE

6.1 Not much was submitted by the Applicant during the Arbitration hearing, she failed to shed light on several key aspects during the arbitration, despite guidance from myself as arbitrator. She failed to state whether she

questioned the Respondent on the shortfalls each time she received less the agreed amount of E700.00. further why she continued to work for a period of over three months without receiving her salary.

6.2 During the pre -arbitration hearing both parties were present and it was agreed that the only issue in dispute was the balance allegedly owed to the Applicant of E800.00. The Applicant's employment status was never in issue, so I am led to believe that the Applicant was an employee protected by **section 35 of The Employment Act 1980.**

6.3 Throughout the arbitration hearing the Applicant failed to clearly present her case, despite attempts by myself to guide her. In her evidence the Applicant submitted that she is owed an amount of E800.00 by the Respondent. I am not aware how the Applicant got to this figure and no evidence was adduced to help me in this regard.

6.4 Based on evidence submitted by herself she was employed until July 2008. When calculating the amounts paid to her during this period, the amount owed to her by the Respondent was an amount of E2, 900.00. An amount of E1, 400.00 was paid to her in July 2008, which means a balance of E 1,500.00 remained. It is therefore not clear

where she gets the balance of E800.00.

6.5 Whilst the evidence of the Applicant is unrebutted, it is my duty to ensure that the matter is handled fairly and that the law is correctly applied. The Applicant has not adduced enough evidence in support of her case. She has further failed on a balance of probability to prove that she is owed the amount claim, further she has failed to prove how she has reached that figure.

7. CONCLUSION

7.1 It is therefore my finding that the Applicant has failed to prove her case on a balance of probabilities.

8. RULING

8.1 I accordingly find that the Applicant has failed to adduce enough evidence in support of her case, and she has failed to prove her case on a balance of probability. Therefore the Applicant's claim should fail, and is accordingly dismissed.

**DATED AT MANZINI ON THIS THE 26th DAY OF OCTOBER,
2009**

COMMISSIONER BANELE NGCAMPHALALA
ARBITRATOR