



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

HELD AT MBABANE
416/13

SWMB

In the matter between:-

ZODWA MAVUSO

APPLICANT

And

VALD'S INVESTMENTS (Pty) LIMITED

RESPONDENT

CORAM:

Arbitrator	:	Ms K. Manzini
For Applicant	:	Ms. Z. Mavuso
For Respondent	:	Mr. G. Vilakati

ARBITRATION AWARD

1. PARTIES AND REPRESENTATION

The Applicant herein is Ms. Zodwa Mavuso, a Swazi female adult of Shallom Christian Fellowship, P.O. Box A 761, Swazi Plaza, Mbabane. Ms Mavuso represented herself in these proceedings.

The Respondent is Vald's Investments Limited, a company duly registered in terms of the company laws of Swaziland. The Respondent's physical address Sidwashini Industrial Site, Noyane Building, Office No. 8 A. Mr. Gilbert Vilakati, the Director appeared on behalf of the Respondent.

2. ISSUES IN DISPUTE

According to the Certificate of Unresolved Dispute filed herein (No. 760/13) this is a dispute of alleged unfair dismissal.

The certificate states that the Applicant is claiming payment of E4, 200.00 as stated in a letter written to the Applicant and to the Ministry of Labour.

The Applicant maintained that she was unfairly dismissed, whilst the Respondent refuted this allegation, and further averred that the parties had signed an agreement which dealt with the issue of the termination of her services, as well as all matters of payments due to her.

3. SURVEY OF EVIDENCE

The Applicant gave testimony in support of her evidence, whilst Mr. Gilbert Vilakati testified in support of the Respondent's case.

3.1. THE APPLICANT'S CASE

3.1.1. THE TESTIMONY OF MS ZODWA MAVUSO

The Applicant testified under oath that she was employed as a Secretary, by the Respondent on the 2nd of September, 2008. She stated that she had earned a monthly salary of E800.00.

The Applicant stated that on the 12th of March, 2013, the Director of the company, Mr. Gilbert Vilakati had told her that she should go home, and await to be called back to work as the business was not doing well. She stated that Mr. Vilakati had paid her an amount of E1,500.00 as her monthly remuneration. She testified that on the 1st day of April, 2013 she had assumed that the business was on track as she had not heard from Mr. Vilakati, so she had returned to work.

She stated that she had opened the office with her own office keys that morning and had sought to resume her duties, only to find that her job was being performed by a certain Mr. Manqoba Fakudze who had always worked for the Respondent as a painter. She stated that on the 12th of March, 2013 when Mr. Vilakati told her to go home as business was bad, she had assumed that this instruction also applied to Manqoba, but it turned out that the alleged poor fiscal position of the company did not affect him as he had remained and was infact performing most of her duties.

She stated that she had continued to do her work at the office on that day, and Mr. Vilakati had arrived at the office, and told her that he had not as yet received money. She stated that he had not explained to her what money he was referring to, and had continued with her work. The Applicant testified that the following day when she tried to gain entry into the office, she found that Mr. Vilakati had changed the padlock to the door, hence she could not go into the office. She stated that her calls to Mr. Vialakati's mobile phone had gone unanswered, and on the 16th of April, 2013 she had proceeded to lodge a dispute with the Department of Labour.

The Applicant stated that when the officers at the Labour Department had called Mr. Vilakati, he had availed himself and had after discussions with the Labour Official, written a letter to the said Ministry of Labour wherein he stated that due to the bad financial state of the company, and the nation-wide economic melt-down, he had no option but to terminate the Applicant's services as of the 31st of May, 2013.

Ms Mavuso applied that the letter, dated the 24th of May, 2013 be admitted as part of her evidence, which application was granted. The letter further detailed the willingness of Mr. Vilakati to pay her the following sum by the end of September, 2013 as being monies due to her:-

2009 - 2010 = E1,200.00

2010 - 2011 = E1,500.00

2011 - 2012 = E1,500.00

Total = **E4,200.00**

The Applicant stated that Mr. Vilakati had paid her a sum of E2,700.00 and by the end of September, 2013, but this had not happened.

The Applicant stated that she had been unfairly dismissed under the guise of a retrenchment, which thing was not true as the company continued to operate, and in fact Mr. Vilakati had replaced her with Manqoba.

The Applicant stated that she was not really interested in being paid the claims as contained in the Report of Dispute and the Certificate of Unresolved Dispute. The Applicant tabled a fresh claim which stood as follows:

1) Severance allowance	= E 225.00
2) Leave pay	= E 1,350.00
3) Compensation for unfair dismissal	= E18,000.00

	E21, 600.00
Less	E 2, 700.00

Total Due	E18,900.00
	=====

During cross-examination the Director of the Respondent produced an agreement which the Applicant had signed on the 21st of November, 2013 at the offices of the Commissioner of Labour.

This agreement states clearly that the Applicant was accepting an amount of E2,700.00 in full and final settlement of all her claims against the Respondent. Mr. Vilakati asked the Applicant if she had not indeed signed this agreement? The Applicant stated that she could only recall the second page of the agreement, and was not sure if the first page had been there on the day that she signed. She stated that she had only signed the document to acknowledge receipt of the E2,700.00 which she understood to be part-payment of the E4,200.00 which she claimed that Mr. Vilakati had offered her. She could not explain why she signed a document which started with a number 3, and did not question where the beginning of the document was.

3.2. RESPONDENT'S CASE

3.2.1. THE TESTIMONY OF MR. GILBERT VILAKATI

Mr. Vilakati testified under oath that he had not dismissed the Applicant. He stated that he had merely required her to remain at home whilst he sorted out the poor financial standing of the company. He stated also that he had been surprised that the Applicant had approached the Commissioner of Labour's office, and had alleged that he had dismissed her, under the guise of retrenching her.

The witness stated that whilst he had indeed offered the Applicant an amount of E4,200.00, the officers at the Commissioner of Labour, at the behest of the Applicant had duly drawn up the Memorandum of Agreement wherein he was

required to pay the Applicant the sum of E2,700.00 in full and final settlement of the whole matter.

Mr. Vilakati stated that he had duly complied as he did not want to be on the wrong side of the law.

The witness stated that he believed that the Applicant was not being truthful in her denials that she was well aware of the contents of the agreement, and in particular the first page of the Memorandum.

4. ANALYSIS OF EVIDENCE

The Applicant herein claims that she was unfairly dismissed, and initially claimed payment in terms of the contents of the Report of Dispute, and certificate of Unresolved Dispute. As the arbitration proceedings progressed she turned the tables and claimed an amount of E18,900.00, as opposed to the E4,200.00 which she initially claimed.

It also came to light during the arbitration proceedings that the Applicant signed a document titled "Memorandum of Agreement" which document detailed her acceptance of an amount of E2,700.00 in full and final settlement of the dispute.

Pertaining to the claim of E18,900.00. The Commission does not have the jurisdiction to determine the award of this amount to the Applicant as it was never reported by the Applicant to the Commission. According to Section 85 (2) & (3), the Commission

may, upon a valid referral to arbitration determine a matter which has been certified as unresolved.

In casu, the only dispute that has been reported to it is that of Applicant's claim of E4,200.00, this being the dispute that remained unresolved even after conciliation. As such the claim of E18,900.00 is not properly before the Commission for arbitration. Should the Applicant feel strongly about her claim of E18,900.00 against the Respondent, she should take the initiative to duly report this dispute to the Commission.

Regarding the issue of the claim for E4,200.00, reference must duly be made to the letter which the Director of the Respondent wrote to the Ministry of Labour on the 24th of May, 2013, wherein he offered to pay the Applicant an amount of E4,200.00, he stated therein that this was in pursuance of the fact that the company had no choice, but to terminate the services of the Applicant due to the economic melt-down that was faced by the country as a whole. It is therefore without a doubt that the Applicant's services were indeed terminated by the Respondent, despite the submissions made by Mr. Vilakati that he did not dismiss her.

It is also clear that he made this offer, after the Applicant reported the dispute to the Commissioner of Labour's office, and the said office had summoned Mr. Vilakati to their offices so as to try and reach a settlement. In view of the fact that it had been the Applicant, who of her own volition who approached the

Commissioner of Labour's office, and asked for their intervention, it would be Logical to deduce that they acted at her behest in summoning the Director of the Respondent to their offices.

It is also clear that it was the same officials of the Commissioner of Labour's office, who drafted the Memorandum of Agreement (which was stamped by the said office on the 20th November 2013) which agreement was signed by the Applicant on the 21st of November 2013, and also by Mr Vilakati on the 20th of November, 2013. The Applicant did not at anytime deny that she signed this agreement.

The said agreement states on its face that it was agreed by the parties that the Applicant would accept an amount of E2700.00 in full and final settlement of all her claims. The said memorandum stated that the said amount was to be accepted in settlement of the following claim in

**1) Severance Allowance Notice = $4-1=3 \times 10=30 \times 62.50$
=E1875.00**

2) Additional Notice = $4-1=3 \times 4=12 \times 62.50$ = E750.00

Total: = E2625.00

This agreement presents a difficulty to the Commission as the gist of it is that the Applicant agreed to accept the amount of E2700.00 in full and final settlement of all her claims.

The said agreement is a document which comprises two pages. The Applicant appended her signature in clause number "4", which is preceded by clauses "1", "2" and "3" clause number "2"

states that the Applicant agrees that “after accepting the amount of E2700.00 she has no further claims from the Applicant’.

Clause number “3” provides that the contracts of the agreement have been read and explained to the parties in both English and Siswati, and having understood the contents, the parties append their signatures. The Applicant did in fact append her signature below all thus in clause number”4”.

In light of the foregoing evidence, it would appear that the Applicant waived her rights to make any further claims that she may have had against the Respondent, by signing the said document. It is also difficult to understand how she could have only signed the second page without reading it, and thereby realizing that it was a continuation of a document that contained further information overleaf (on page one). The page is clearly marked as containing clause “3”’, “4” and “5”’, so it would appear clearly that these were logically preceded by numbers ‘1’ and ‘2’.

A.J. Kerr in “Principles of the contract 6th Edition page 478 states as follow:

“A person cannot be held to have renounced their legal right by acquiescence unless he is held to have had full knowledge of his right and intended to part with them, there should be an intention to waive”.

In casu, the Applicant testified that she of her own volition approached the Commissioner of Labour's office to seek legal advice and assistance. She conceded that the Director of the Respondent initially offered her E4,200.00, it transpired after sometime she decided to accept the E2,700.00, and hence renounced her right to the claim, the reasons for having done so are not clear, but it can be inferred that by signing this document, and accepting the payment she did so renounce her right to claim more money.

In effect the Applicant accepted the compromise. Our Law is trite that where a party accepts benefits under any settlement agreement in full and final settlement of the benefits owed him or her by a former employer arising from the termination of his or her employment relationship with such employer, and had abided by such acceptance of those benefits, he has placed himself beyond the jurisdiction of the Courts. **(See-Joseph Dlamini v Swaziland contract Furniture & Alexander Forbes: I.C. Case No 549/10, see also Mduduzi Nhleko vs Swazi Oxygen (Pty) Ltd, I.C. Case No. 211/2006).**

Similarly, in the present case, and in view of the fact that the Applicant signed the Agreement thereby signifying her acceptance of its terms, and further accepted the benefits paid to her in terms thereof, the dispute between her and the Respondent was finally settled. The Applicant was fully aware of this benefit and decided to part with it by signing the settlement agreement. There was effectively no dispute between the

Applicant and the Respondent, it follows that this Commission has no jurisdiction to deal with this matter.

5. AWARD

Having heard the evidence and arguments of both parties, the application for unfair dismissal is hereby dismissed.

**THUS DONE AND SIGNED AT MBABANE ON THIS
DAY OF APRIL, 2014.**

**KHONTAPHI MANZINI
CMAC ARBITRATOR**