



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

**Held at Mbabane**

**SWMB 383/13**

In the matter between:

**SINDI MANANA AND TWO OTHERS**

**APPLICANT**

AND

**THREE KAY KAY INVESTMENT**

**1<sup>st</sup> RESPONDENT**

**A.R.Y INVESTMENT**

**2<sup>nd</sup> RESPONDENT**

CORAM:

**Arbitrator**

: Ms K. Manzini

**For the Applicants**

: Mr S. Phiri

**For the 1<sup>st</sup> Respondent**

: Mr D. Mabuza

**For the 2<sup>nd</sup> Respondent**

: Mr D. Msibi

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**ARBITRATION AWARD**

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Venue : Asakhe House Mbabane

Nature of Dispute : Unfair Dismissal

**1. PARTIES AND REPRESENTATION**

**1.1** The Applicants herein are Ms Sindi Manana, a Swazi female adult and Messrs Sibusiso Msibi, and Masomalenhle Maseko, who are both Swazi male adults. The Applicants are all residents of Mbabane, in the Hhohho region. The Applicants were represented by their attorney, Mr Sabelo Phiri.

**1.2** The first Respondent is Three Kay Kay Investment, whilst the second Respondent is A.R.Y Investment.

**1.3** The two Respondents are both legal entities, duly incorporated and registered in terms of the Laws of Swaziland.

**1.4** The first Respondent's physical address is Shop No.1, Riverside Estate, Industrial Site, Mbabane, within the Hhohho Region. Mr Stanley Mahlalela, who is a labour consultant initially represented the first Respondent, however he was later replaced by Mr Dumisani Mabuza, who is also a labour consultant.

**1.5** The second Respondent's physical address is Office Shop No.4, Plot No. 527, Ngwane Street within the city of Manzini. The second Respondent was represented by Mr David Msibi, a labour consultant.

## **2. ISSUES IN DISPUTE**

According to the certificate of unresolved dispute filed herein (No. O41/14), the nature of dispute is one of alleged unfair dismissal. The Applicants make the following claims:

### **2.1 Sindi Manana**

Notice pay	- E 1361.80
Additional Notice Pay	- E 228.56
Severance Allowance	- E 571.40
Leave Pay	- E 1028.52
Underpayments	- E4712.40
Maximum Compensation for unfair dismissal	- E 16341.60

### **2.2 Sibusiso Msibi**

Notice pay	- E 1361.80
Additional Notice Pay	- E 228.56

Severance Allowance	- E 571.40
Leave Pay	- E 1028.52
Underpayments	- E4712.40
Maximum Compensation for unfair dismissal	- E 16341.60

### **2.3 Masomalenhle Maseko**

Notice pay	- E 1361.80
Additional Notice Pay	- E 228.56
Severance Allowance	- E 571.40
Leave Pay	- E 1028.52
Underpayments	- E4712.40
Maximum Compensation for unfair dismissal	- E 16341.60

**2.4** The Applicants argued that they were dismissed in a manner that was substantively and procedurally unfair because they were dismissed for refusing to sign fixed term contracts, whilst they were permanent employees.

**2.5** The Respondents on the other hand could not agree on which one of them had actually employed the Applicants at that time when the cause of action arose.

## **3. SUMMARY OF EVIDENCE**

### **3.1 THE APPLICANTS CASE**

The Applicant representative called Ms Sindi Manana, as well as Mr Sibusiso Msibi to testify at the arbitration proceedings.

### **3.2 THE TESTIMONY OF MS SINDI MANANA**

Ms Manana testified under oath that she was originally employed by the second Respondent on the 6<sup>th</sup> of June, 2010, as a Shop Assistant. She stated that she had worked as a permanent employee at a salary of E 800.00 per month, which salary was later increased to E 1000.00 per month.

Ms Manana stated that during the time that she and her Co-Applicants had been employed as Shop Assistants for the second Respondent, the establishment had been under the management

of a number of directors, but the two primary members of management had been Mr Muhammad Ejaz as well as Mr Azhar Iqbal.

She stated that in or about March, 2012, Mr Iqbal had ceased to play a visible role in the company, and he had not shown up at the workplace for quite a while. She stated that in June of that year. Mr Ejaz had called all of the employees to a meeting, where he had informed them that they were from that time onwards employed by a company called Three Kay Kay, which was under his directorship, and that they would receive all instructions from him as they were no longer employed by A. R. Y Investments. She stated that Mr Ejaz had further informed them that the first Respondent would be responsible for the payment of their salaries.

The Applicant stated further that during that meeting Mr Ejaz had been in the company of a certain Mr Vilakati, and he had informed them that this was his attorney and he would be responsible for handling all their concerns regarding their terminal benefits from the A.R.Y investments company. The Applicant stated that Mr Ejaz had handed out contracts of employment to the employees and told them to read these, and sign them as soon as possible. The Applicant stated that she and her colleagues decided to take the contracts with them, and seek legal advice about their contracts.

The testimony of Ms Manana was to the effect that she and her Co-Applicants had taken the contracts to the Department of Labour, where concerns were raised about the fact that whereas they had been permanent employees, they were now being offered fixed term contracts which entitled them to employment, only until the 31<sup>st</sup> of December 2012. She further stated that the said contract made no mention about the terminal benefits which were due to them from the second Respondent.

The Applicant testified that in the month of November, 2012. Mr Ejaz had asked them to return the contracts to him. She stated that when he realised that she had not signed the contract, he had become very angry and had grabbed her by her ear and had thrown her out of the workplace and told her to get out of his shop.

The Applicant stated that on the 9<sup>th</sup> of November, 2012. Mr Atif, one of the managers of the first Respondent, had called her on her

mobile phone to ask her to pick up a letter at the first Respondent's premises. She stated that the letter had actually stated that she was being suspended without pay. She stated that she had taken this letter to the Department of Labour once again, and had been told by a certain Thuli that the letter failed to disclose the charges against her, as well the duration of the said suspension. The Applicant stated that Thuli had then called Atif to attend a meeting at the Department of Labour and he had taken the letter with him, as he had said he was yet to get further instructions on the letter from Mr Ejaz. She stated that as a result she did not have a copy of the said letter.

The Applicant stated that the Department of Labour tried to facilitate several conciliatory meeting between the Applicant and the first Respondent, but these attempts proved futile as the director, Mr Ejaz did not attend the proceedings. She stated also that she and her Co-Applicants had also tried to write letters to the first Respondent, wherein they laid out their claims as reflected about in the report of Dispute which they ultimately made to CMAC. She stated that the employer (1<sup>st</sup> Respondent) had failed to address these issues.

She stated that she had been surprised to receive the letter of suspension from the employer in the first place as she had regarded herself to have been dismissed on the 6<sup>th</sup> of November, 2012 when Mr Ejaz had thrown her out of his shop. She also stated that instead of dealing with the issues that pertained to their claims of unfair dismissal, the employer had laid a false criminal charge of breaking into the employment place with the police. She stated that she and her Co-Applicants had been telephonically summoned to the police station where they were informed of allegations against them, but nothing ever came out of the said charges as it appeared that Mr Ejaz had abandoned them.

The Applicant stated that her dismissal by Mr Ejaz had been substantively and procedurally unfair as she had not committed an offence by refusing to sign the contract of employment that had the effect of disadvantaging her. She stated also that her employer had not charged her with any misconduct, and had not subjected her to a disciplinary hearing .She stated that this was evidenced by the fact that even the reported suspension letter that the employer

had served her with had failed to disclose the charges against her, as well as the duration of the alleged suspension. During cross-examination, the Applicant maintained that she was paid a salary of E1000.00 per month despite the fact that Mr Ejaz had put it to her that she may have earned a sum in the region of E 1300.00. The Applicant stated that she was only paid a sum more than E1000.00, if she earned a bonus of E100.00.

Mr Ejaz also put it to the Applicant that at the time she left the employ of the 1<sup>st</sup> Respondent, she had owed a sum of E 2400.00 which had been advanced to her by the employer. Ms Manana denied this and stated that even from the time that she had initially been employed by the 2<sup>nd</sup> Respondent the employer would not, as a rule advance to an employee more than E 1000.00 which they had to pay back in three months instalments. She stated that the only loan she had received had been from the 2<sup>nd</sup> Respondent (A.R.Y Investment) and not from the 1<sup>st</sup> Respondent which is the employer that had ultimately dismissed her.

Mr Ejaz enquired from the Applicant why she and her Co-Applicants had failed to sign and return the contracts as he had given them more than a month to read the contract over. Ms Manana testified that she and Co-Applicants had taken the contracts with them so that they could consult and get legal advice on whether these contracts would not prejudice them, and when they discovered that the terms did in fact prejudice them, they had been reluctant to sign them.

Mr Ejaz put it to the Applicant that he had not been informed by the Applicants of the reasons for their failure to sign the contracts and then had simply walked out of the work place in November 2012 when he enquired from them when they would return same to him. The Applicant denied this and maintained that Mr Ejaz had grabbed her by her ear and had manhandled her before he threw her out of his shop. She stated that he had dismissed her by so doing and had told her to get out of his shop as she was disturbing his customers.

The Applicant clarified that she had been the first to be dismissed, whilst her Co-Applicants had been dismissed later on that same day of the 6<sup>th</sup> of November 2012. She stated that she and her Co-

Applicants had telephoned one another on that day to relay to one another their experiences at the hands of Mr Ejaz as he physically threw them out of his shop.

Mr Ejaz put it to the Applicant that she and her Co-Applicants had been served with letters calling them to appear at a disciplinary hearing, but they had failed to attend the hearing. The witness stated that the only letter she had collected from the workplace was one that purported to be a suspension letter but this letter had not disclosed the duration of her suspension and neither had it disclosed the charges levelled against her. She stated that it had certainly not summoned her to any disciplinary hearing, as all it stated was that she was on suspension without pay. She pointed out that this letter had been dated the 9<sup>th</sup> of November 2012.

Mr Ejaz put it to Ms Manana that he had called the Applicants to come and collect their letters of dismissal on the 22<sup>nd</sup> of January, 2013, but they had not done so. Ms Manana denied this as well and maintained that she had only been called to collect the letter of the 9<sup>th</sup> of November 2012.

Mr Ejaz asked why she had not responded to the letter of the 9<sup>th</sup> November 2012? She stated that she had not been able to as Mr Atif had taken it back and had not returned it to her when he was told of its irregularities by the said Thuli at the Labour Department.

Mr Ejaz put it to the Applicant that she and her Co-Applicants had acted defiantly as his attorney had called them to attend a disciplinary hearing at the workplace, and instead they had gone to the Department of Labour.

Ms Manana denied that she or her Co-Applicants had ever been summoned to attend any kind of disciplinary proceedings and challenged the employer to prove that they had indeed been called. Mr Ejaz insisted that he had called Ms Manana about four times. Ms Manana vehemently denied this and maintained that she had been the one who had tried to resolve the impasse between themselves and Mr Ejaz by going to the work place when she was called by Mr Atif and by engaging the Department of Labour to help them resolve their differences, but the employer had failed to cooperate and had not attended the meetings.

During the same cross-examination, the Applicant confirmed that the dispute at hand was instituted against the 1<sup>st</sup> Respondent and not the 2<sup>nd</sup> Respondent as they had been employed by the Three Kay Kay Investment Company in the June, 2012 and had been dismissed by Mr Ejaz on the 6<sup>th</sup> of November 2012. She clarified that as from June, 2012 they had ceased to be employed by A.R.Y Investments and had been employed by Three Kay Kay Investments. She also clarified that they had been under the management of Mr Ejaz who was the Director of the 1<sup>st</sup> Respondent, and had also been paid their salaries by the 1<sup>st</sup> Respondent.

She explained that it had been Mr Ejaz who had insisted that the 2<sup>nd</sup> Respondent also be cited as the party to the proceedings, but as far as they were aware, the 2<sup>nd</sup> Respondent had no longer been their employer at the time when they were dismissed. She stated that even when they had sought legal advice from Department of Labour, they had not called the management of the 2<sup>nd</sup> Respondent, in particular Mr Iqbal to attend as he was not involved in the dispute.

During re-examination the Applicant maintained that she and her co-workers were underpaid because they had been paid a salary of E1000.00 and yet the Government gazette for the Retail Industry stipulates that they ought to have been paid E1361.80. She further testified that in all the time that she had never been afforded leave and neither had she been paid any money in lieu of leave.

### **3.1.2 THE TESTIMONY OF MR SIBUSISO MSIBI**

The Applicant testified under oath that he was also employed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, but at the time of the dismissal, he had been employed by the 1<sup>st</sup> Respondent.

Mr Msibi's testimony in all respects buttressed that which had been testified to by Ms Manana and was identical in many respects.

He did however, testify that when Mr Ejaz dismissed him, he had grabbed him by his clothing and had tossed him out of his shop. He said that during this fracas, Mr Ejaz had torn his t-shirt. He also stated that this had occurred on the 6<sup>th</sup> of November 2012, a while



later than the time that Ms Manana had been thrown out by Mr Ejaz. He stated that at the time he had been dismissed together with Mr Masomalenhle Maseko. He stated that after this they had all liaised telephonically to discuss a way forward as they deemed their dismissals to be unfair. Mr Msibi also confirmed that they had all been dismissed for failing to sign the fixed term contracts that Mr Ejaz had given to them.

He also confirmed that he had been served with a letter of suspension whilst attending a meeting to try and resolve their employment issues at the Department of Labour. He testified that it had been served upon him by Mr Atif, but he had not taken it from him as he deemed it useless as he had already been dismissed. He confirmed also that the Department of Labour official had tried to hold conciliatory meetings between them and the employer, being Three Kay Kay Investment and not A.R.Y Investments because their employer at the time had been the 1<sup>st</sup> Respondent. He confirmed that he wanted to be awarded the claims that appeared in the certificate of unresolved dispute and stated that he and his Co-Applicants were currently unemployed, since their dismissal.

During cross-examination he confirmed that he had initially been employed by A.R.Y. Investment, Mr Iqbal one of the directors had left the business to go on a form of sick leave. He stated that he was aware that Mr Ejaz had also been a Director of the said company as he had told him of this fact on a certain date when he was issuing instructions to him. He stated also that it had been Mr Ejaz who had told them as employees that their employment with both A.R.Y Investments had come to an end, and that they were from that time going forward in the employ of Three Kay Kay Investments, a company which was under his directorship. He stated that they had not questioned this more as he had always been their boss in any case, and they were told that their terms and conditions of employment would not change. He stated that this had occurred in on about June, 2012, after that Iqbal had left in as bout March, 2012.

Mr Msibi also clarified that he was actually employed by the 2<sup>nd</sup> Respondent on the 26<sup>th</sup> of April, 2012, and not in June 2010. He confirmed that he had refused to sign the contract as it sought to

offer him a fixed term employment contract, and yet he had been a permanent employee. He stated also that the said contract had not disclosed any details regarding the payment of their terminal benefits by A.R.Y Investments. He stated that Mr Ejaz had assured them before that this attorney, a certain Mr Vilakati would deal with those issues, but this had not happened up until they were dismissed on the 9<sup>th</sup> of November, 2012. The Applicant testified that his experiences mirrored those of the third Applicant, Mr Masomalenhle Maseko in many respects as they had left the workplace.

### **3.2 THE RESPONDENTS CASE**

#### **3.2.1 THE TESTIMONY OF MR MUHAMMED EJAZ**

Mr Ejaz testified under oath that he knew the Applicants to be former employees of A.R.Y Investment. He stated also that he had developed a working relationship with the 2<sup>nd</sup> Respondent in or about the year 2010 when he supplied stock to this company. He stated that he was at that time based in South Africa, and this arrangement had carried on for a period of about a year and a half until the 2<sup>nd</sup> Respondent fell behind with payments that were due to him. He testified that he had then approached Mr Atif Shuja and Mr Ali Abbas to help him by setting up a company (being the 1<sup>st</sup> Respondent), which was established but did not operate until July 2012. He explained that it was this company that had employed the Applicants and dismissed them later on.

He stated that he was not involved in the company at the time, but he was aware of what took place between the employer and Applicants as he spent a lot of his time at the workplace of the 1<sup>st</sup> Respondent. He stated that he was aware that the director of the company, Mr Atif Shuja had handed the Applicants employment contracts and they had been expected to read and sign same, but kept them for more than a month without signing and returning same.

He stated that they were asked to return the said contracts on several occasions, but the Applicants refused to do so on all these occasions. He stated that the Applicants demanded **(his actual words being; ...they demanded from us...)** the benefits that

were due to them upon termination from employment by A.R.Y Investment. He stated that the 1<sup>st</sup> Respondent could not afford to pay them this money.

The Applicants representative asked Mr Ejaz if by the use of words; **...” demanded from us...” he was including himself?** The witness denied this and said that he was not actually including himself. He stated that the Applicants were demanding their terminal benefits from the 1<sup>st</sup> Respondent’s company.

Mr Ejaz explained that thereafter, he had followed the legal procedures (his actual words being; **“.... I just went through the legal procedures and called an attorney and called them to disciplinary hearings...”**). He stated that he had called the Applicants telephonically and had summoned them to attend disciplinary proceedings and informed them to collect their letters that officially summoned them to the disciplinary proceedings.

Mr Ejaz stated that he and his attorney had called the Applicants three times but they had not collected their letters. He stated again in the same breath that he had been told the entire story by Mr Atif and the chairperson of the disciplinary hearing. He stated that he was also informed that the Applicants had not attended the disciplinary proceedings that they had been summoned to attend. He stated that he knew that the Applicants were aware of the disciplinary proceedings because they had received the letters.

Mr Ejaz was asked what they had then done upon the Applicants failure to attend the disciplinary proceedings? Mr Ejaz replied as follows: - **“When no one came we continued with disciplinary hearings in their absence”**. He stated that only Mr Atif and the chairperson of the hearing had been present at the hearing. He stated that he was also aware that after all this, Mr Atif had issued the Applicants with letters of dismissal.

The witness stated that he only became a director of the 1<sup>st</sup> Respondent Company in April 2013, and by that time the employees had already been dismissed.

Under cross- examination, Mr Ejaz insisted that he had merely been a supplier for A.R.Y Investment Company and further denied that he had been a director even when the Applicants

representative showed him a copy of the “Form J” document that pertains to the 2<sup>nd</sup> Respondent Company which reflected that he had been a director from August 2010. He did not respond when asked how his version could be true when the document was duly filed and lodged with the office of the Register of Companies.

He further maintained that the Three Kay Kay Investment company had been established by Mr Atif and Mr Shuja in June 2012, and the gentlemen operated the company, whilst he simply supplied them with the stock.

The Applicants representative put it to the witness that he was telling untruths as his statements were contradictory as he had earlier said that he had asked Mr Atif and Mr Shuja to help him establish a company, and now he was disassociating himself with that company. Mr Ejaz stated that he had only asked to supply the company established by Messrs Atif and Mr Shuja.

Mr Ejaz was also asked how he was able to be so knowledgeable about what transpired between the 1<sup>st</sup> Respondent Company and the Applicants if he was merely a supplier. He stated that he had been around the workplace at the material time. The Applicants representative applied that most of Mr Ejaz testimony especially that which pertained to the giving of contracts by Mr Atif to the Applicants be considered with great caution as he made several inconsistent statements. He was also asked why he had called an attorney and had arranged for disciplinary proceedings to be initiated against the Applicants if he had merely been a supplier? He was also asked why he then turned the tables by saying that he had been told all of this by Mr Atif? Mr Ejaz insisted that all of this had occurred in his presence; and he had actually called the attorney and had solicited the necessary advice and assistance from him regarding the disciplinary proceedings.

He was asked how he knew that the Applicants had received the letters summoning them to the disciplinary hearing, or that they had been called to attend? He stated that he had been told all of this by Mr Atif. He was asked also how he knew that the Applicants had been called to collect the letters?. He stated that he had been told this also by Mr Atif. Mr Phiri reminded the witness that he had

earlier said that he had called the Applicants himself? Mr Ejaz said that he had actually been told all of this.

He was also asked the testimony of the Applicants that he himself had manhandled the Applicants and had thrown them out of the shop at the time of their dismissal by him. Mr Ejaz stated that he had not thrown the Applicants out, but they had simply left the shop of their own volition. He stated that he did not have the right to dismiss them as he had merely been a supplier to the shop.

The witness stated also that he believed that it had been Mr. Atif who had dismissed the Applicants, and denied that it had been him that had dismissed them.

Mr. Ejaz was asked under cross-examination if the issue of the Applicant's terminal benefits had been deliberated as between the directors of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. He stated that he believed that this had been discussed, but he did not know what the outcomes of those deliberations were. He merely confirmed that the Applicants had been employed by the 1<sup>st</sup> Respondent as of June, 2012, and had been dismissed by the directors of this company in November, 2012. He acknowledged that indeed this dispute did not involve the payment of terminal benefits by the 2<sup>nd</sup> Respondent to the Applicants; and therefore Section 33 bis of the Employment Act, 1980 (as amended) did not apply in this case.

The witness proceeded also to make reference to several documents through which he sought to display that he had not been a director at the 1<sup>st</sup> Respondent Company when the Applicants were dismissed. The witness referred to a form J for the 1<sup>st</sup> Respondent which was stamped on the 31<sup>st</sup> of May, 2011, by the office of the Registrar of Companies which was lodged by Mr Abbas Ali which reflected that this gentlemen as well as Mr Atif Shuja were directors of the company. He also filed a form J for the 1<sup>st</sup> Respondent Company which was stamped by the Registrar of Companies on the 22<sup>nd</sup> of October, 2013 which reflected that Mr Ejaz became a director of the company as of the 1<sup>st</sup> of April, 2013.

## **5. ANALYSIS OF EVIDENCE**

The matter at hand involves a claim of unfair dismissal which was made by the three Applicants against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. It became quite clear from the evidence of the two Applicants, who in concert testified that as of June, 2012 they had been employed by the 1<sup>st</sup> Respondent (Three Kay Kay Investments). They also confirmed, and this was not in issue that they were dismissed by the 1<sup>st</sup> Respondent in November, 2012.

The 1<sup>st</sup> Respondent's witness, Mr Ejaz went to great lengths to try and distance himself from the dismissal of the Applicants. He stated that he was merely a supplier of the 1<sup>st</sup> Respondent Company at the time of their dismissal, and had only been informed of their dismissal by Mr Atif. He continued to give a highly contradictory testimony in that he would time and again testify that he had called an attorney who had prepared the charges against the Applicants, and that he himself had called the Applicants to come and collect their letters that called them to the disciplinary proceedings against them. He would in the next breath testify that all of this had been relayed to him by Mr Atif. It became clear that Mr Ejaz was a very unreliable witness, bearing in mind that he himself had conducted the cross-examination of the two Applicants, and he had put to them that they had simply walked out of the workplace, and had not explained to him why they were not returning to him the contracts that he had given to them. He had also put it to Ms Manana that she had owed the 1<sup>st</sup> Respondent a sum of money which was in the region of E2, 400.00 which he had advanced to her. All of this is quite baffling in view of the fact that he testified later on that he was merely a supplier of the 1<sup>st</sup> Respondent and not a director.

Both of the Applicants testified under oath, and provided corroboration for one another's testimonies that they had been scolded by Mr Ejaz for failing to sign and return contracts, and had thereafter been physically manhandled by him, and further thrown out of the premises. Mr Ejaz in all of this simply denied that he had done this when it was put to him under cross-examination. He stated that he had merely been around the premises when all of this occurred, and had looked on as Mr Atif dismissed the Applicants. He stated also that he was told by Mr Atif that the bone of contention was the failure of the Applicants to return the contracts to him (Mr Atif). Through all of this it became quite

evident that more than 98% of Mr Ejaz's testimony cannot be relied upon as it was fraught with inconsistencies that bordered on outright perjury as Mr Ejaz told blatant untruths under oath.

When closing submissions were made however, the 1<sup>st</sup> Respondents' representative set the record straight by conceding that the Applicants were indeed employed by the 1<sup>st</sup> Respondent in June, 2012, and had been dismissed by this same entity in November, 2012. It was however; denied that the 1<sup>st</sup> Respondent owed the Applicants any monies under the claims of severance allowance, leave due, underpayments, notice and additional notice. He stated that these were the obligation of the 2<sup>nd</sup> Respondent as the Applicants had been under the employ of the 2<sup>nd</sup> Respondent as from 2010, and had only been employed by the 1<sup>st</sup> Respondent for a mere six months.

From the evidence that has been led in casu, it is quite apparent that this is a matter of alleged unfair dismissal, and not one wherein the Applicants are claiming their terminal benefits from the 2<sup>nd</sup> Respondent. The Applicants, it is clear, were employed by the 1<sup>st</sup> Respondent as from June, 2012, and were dismissed in November of the same year. It is for reason that I find that the 2<sup>nd</sup> Respondent was incorrectly joined as being the 2<sup>nd</sup> Respondent in this dispute.

I have no doubt in my mind that the Applicants do have a claim to pursue against the 2<sup>nd</sup> Respondent for their terminal benefits, but not under the current dispute since this is one for unfair dismissal.

In casu, it is clear that the Applicants were dismissed by the 1<sup>st</sup> Respondent in 2012, (November). This point was conceded by the 1<sup>st</sup> Respondent's representative in his closing submissions, so it is no longer one that has to be canvassed at length in order to establish it. The Applicants were indeed from my findings unfairly dismissed since their only sin was to refuse to sign the fixed-term contracts which were handed to them by their employer. They were also not subjected to disciplinary proceedings as it was not proved by the 1<sup>st</sup> Respondent in their evidence. All that was adduced was Mr Ejaz's highly contradictory and unreliable evidence that they were called to collect letters that summoned them to such disciplinary proceedings, but failed to do so.

In light of the foregoing, it is my finding that the Applicants were dismissed in a manner that was both substantively and procedurally unfair by the 1<sup>st</sup> Respondent. This is the case irrespective of whether or not Mr Ejaz was a director of this company at the time that the cause of action arose. It is true, and it is a well established legal position that:-

**“..... a company is an artificial person that cannot make any written or spoken representations. It reads or makes representations through the actions of its directors acting in the course of their duty .....” (per R v Knitzinger 1971 (2) SA 57 (A)).**

This finding is made against the 1<sup>st</sup> Respondent as a juristic personality, and not against Mr Ejaz in his personal capacity, by virtue of the fact that he is presently a member of the directorate of this company, this means that he, together with his co-directors now act in concert in the course of their duties to the company. **(See PPWAWU National Provident Fund v Chemical, Energy, Paper, Printing, Wood and Allied Workers Union 2008 (2) SA 351 (W))**. The company's present directorate has to deal with the issue of this company's indebtedness to the Applicants for their claims of unfair dismissal.

The fact that Applicants were clearly only employed by the 1<sup>st</sup> Respondent as from June, 2012, to November, 2012 means that their claims for severance allowance, additional notice and leave pay falls away. The only claims that can be entertained at this juncture are notice pay, underpayments as well as compensation for unfair dismissal.

Evidence was adduced that the Applicants at the time of their dismissal had earned E1, 000.00, whilst the Regulation of Wages Order, 2012 for the Retail Industry reflects that Shop Assistants in urban area ought to be paid a minimum salary of E1, 361.80. In light of this it is clear that the Applicants were under paid by an amount of (E1, 361.80 - E1, 000.00) E361.80. The said amount shall be awarded to the Applicants over the period from June to November, 2012. In awarding compensation, I have considered the under handed manner in which the 1<sup>st</sup> Respondent sought to evade its obligations to the Applicants, and the manner in which they



were dismissed from employment in that they were physically thrown out of the workplace and also that they are currently unemployed.

## **6. AWARD**

Having heard the evidence of all the parties, it is clear that the Applicants were unfairly dismissed by the 1<sup>st</sup> Respondent.

The 1<sup>st</sup> Respondent is hereby ordered to pay the Applicants the following amounts:-

### **a) Sindi Manana**

(i) Notice pay	=	E1, 361.80
(ii) Underpayments (E361.80 x 6 months)	=	E2, 169.60
(iii) Compensation for unfair dismissal (1 month)	=	E1, 361.80
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		E4, 893.20
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### **b) Sibusiso Msibi**

(i) Notice pay	=	E1, 361.80
(ii) Underpayments (E361.80 x 6 months)	=	E2, 169.60
(iii) Compensation for unfair dismissal (1 month)	=	E1, 361.80
		-----
	=	E4, 893.20
		=====

### **c) Masomalenhle Maseko**

(i) Notice pay	=	E1, 361.80
(ii) Underpayments (E361.80 x 6 months)	=	E1, 361.80
(iii) Compensation for unfair dismissal (1 month)	=	E1, 361.80
		-----
	=	E4, 893.20
		=====

The said amounts are to be paid to the Applicants not later than the 15<sup>th</sup> day of December, 2014. Payment should be made at the CMAC Asakhe Offices, Mbabane.

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

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**KHONTAPHI MANZINI**

**CMAC ARBITRATOR**