



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

**HELD AT MBABANE**  
**152/16**

**SWMB**

In the matter between:-

**NELISIWE VILAKATI & 9 OTHERS**

APPLICANT

And

**PIMENTAS KFC (PTY) LTD**

RESPONDENT

CORAM:

**Arbitrator** : Ms K. Manzini  
**For Applicant** : Mr. E. Sithole  
**For Respondent** : Mr. S. Mngomezulu

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**ARBITRATION AWARD**

**21/03/2018**

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**1. PARTIES AND REPRESENTATION**

- 1.1. The Applicants' herein are Nelisiwe Vilakati, Bongani Mbhamali, Thembi Dlamini, Nontsikelelo Ngwenya, Sifiso Mkhatjwa, Nosisa Mkhwamubi, Wandile Dlamini, Nduduzo Mdluli, Mumcy Vilakati and Thuli Mahlalela. The Applicants are former employees of the Respondent, and are all resident within the Hhohho Region. Mr Eugene Sithole, a union official from Swazi Economic Improvement Workers Union (SEIWU) appeared on the Applicants' behalf.
- 1.2. The Respondent is a company duly incorporated in terms of the Company Laws of Swaziland, and carrying on business at the Swazi Plaza, Mbabane, Hhohho Region. Mr Simo Mngomezulu, an attorney from S.C. Mngomezulu & Company appeared on behalf of the Respondent.

## **2. ISSUES IN DISPUTE**

- 2.1. According to the Certificate of Unresolved Dispute this is a matter of alleged unfair dismissal, wherein the Applicants allege that their dismissal was unfair both in terms of substance and procedure. The Respondent on the other hand denied all the Applicants' claims, and maintained that the dismissals were fair in all respects.
- 2.2. The Applicants herein make the following claims:-

### **a) NELISIWE VILAKATI**

i. Notice pay	-	E 3 099.00
ii. Additional Notice	-	E 3 337.60
iii. Severance pay	-	E 8 344.00
iv. Leave pay	-	E 834.40
v. Compensation for Unfair dismissal	-	E37 188.00

b) BONGANI MBHAMALI			
i.	Notice pay	-	E1, 400.00
ii.	Additional notice	-	E 430.75
iii.	Severance pay	-	E1, 076.00
iv.	Leave pay	-	E 376.60
v.	Compensation for Unfair dismissal	-	E16, 800.00
c) THEMBI DLAMINI			
i.	Notice pay	-	E6, 356.26
ii.	Additional notice	-	E6, 845.20
iii.	Severance pay	-	E17, 112.90
iv.	Compensation for Unfair dismissal	-	E76, 275.12
d) NONTSIKELELO NGWENYA			
i.	Notice pay	-	E2, 298.00
ii.	Additional notice	-	E2, 121.23
iii.	Severance pay	-	E5, 302.80
iv.	Compensation for Unfair dismissal	-	E27, 576.00
e) SIFISO MKHATJWA			
i.	Notice pay	-	E2, 400.00
ii.	Additional notice	-	E2, 400.00
iii.	Severance pay	-	E6, 000.00
iv.	Compensation for Unfair dismissal	-	E28, 805.52
f) WANDILE DLAMINI			
i.	Notice pay	-	E2, 500.00
ii.	Additional notice	-	E2, 692.30
iii.	Severance pay	-	E6, 730.50

iv.	Compensation for Unfair dismissal	-	E21, 600.00
g) NOSISA MKHWAMUBI			
i.	Notice pay	-	E1, 800.00
ii.	Additional notice	-	E1, 384.61
iii.	Severance pay	-	E3, 461.50
iv.	Compensation for Unfair dismissal	-	E21, 600.00
h) NDUDUZO MDLULI			
i.	Notice pay	-	E1, 600.00
v.	Additional notice	-	E492.00
vi.	Severance pay	-	E1, 231.20
vii.	Compensation for Unfair dismissal	-	E19, 200.00
i) MUMCY VILAKATI			
i.	Notice pay	-	E1, 800.00
ii.	Additional notice	-	E1, 384.61
iii.	Severance pay	-	E3, 461.50
iv.	Compensation for Unfair dismissal	-	E21, 600.00
j) THULI MAHLALELA			
i.	Notice pay	-	E2, 600.00
ii.	Additional notice	-	E2, 400.00
iii.	Severance pay	-	E6, 000.00
iv.	Compensation for Unfair dismissal	-	E31, 200.00

### **3. SUMMARY OF EVIDENCE**

3.1. All of the Applicants were led in evidence by their representative to support their respective cases. Mr Wonder

Dlamini, another former employee of the Applicant was also led in evidence except for Mr Wandile Dlamini. The Applicants' representative also called Ms Nothando Dlamini to give oral testimony at these proceedings.

3.2. The Respondent's case was supported by the evidence of two witnesses; being Mr Emmanuel Du pont, as well as Ms Cebile Dlamini. Both parties relied on a number of documents which were submitted and admitted as part of their evidence.

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

#### **THE TESTIMONY OF MS THEMBI DLAMINI**

3.3.1. The Applicant testified under oath that she worked for the Respondent for 26 years, and at the time of her dismissal she was working as an Expeditor. She explained that she had been dismissed from employment after she had been charged, and subjected to a disciplinary hearing. She explained that she had been charged with the offence of intentionally and unlawfully submitting forged sick sheets from the Mbabane Government Hospital on three occasions. The said dates are as follows:-

- a) 3<sup>rd</sup> July, 2015
- b) 3<sup>rd</sup> August, 2015
- c) 4<sup>th</sup> September, 2015

3.3.2. She denied that she acquired forged sick sheets from the Government hospital, and further submitted that prior to all this she had a clean disciplinary record at work. She testified that on the 3<sup>rd</sup> of July, 2015, and the 3<sup>rd</sup> of August, 2015. She had attended the hospital and had followed the entire hospital procedure. She stated that

even on the 4<sup>th</sup> of September, she had followed the same procedure, but had enlisted the assistance of her daughter, and the daughter's maid to get all the necessary stamps affixed to her documents. She stated that as far as she is concerned all of the sick sheets had been properly issued by the Government Hospital, and no forgery had taken place.

3.3.3. According to the Applicant she was given two (2) days off work for each such visit to the hospital (cumulatively she received six (6) days off duty). The Applicant stated that she learnt with shock, during the disciplinary hearing that the stamps that appear on her sick sheets were no longer in use. She lamented that the employer produced evidence that the said stamps were not the current stamps in official use at the hospital; and she was found guilty and subsequently dismissed from employment. She stated that although she had appealed against the termination, the Chairperson of that hearing upheld the dismissal.

3.3.4. During cross-examination, the Applicant clarified that she actually began working for the Respondent in the year 2007 when the current company took over the Kentucky Fried Chicken Franchise. She further conceded that since she was dismissed on the 5<sup>th</sup> of November, 2015, she had therefore worked for the Respondent for 8 years. She conceded also that she had signed a fixed term contract similar to the specimen found on page 228 of the Respondent's bundle of documents. She conceded further that the said document (including the one she signed herself) included the company's Code of

Conduct; and that at page 36 of the said code, there was a list of offences, and their sanctions (including offences relating to forgery, fraud, bribery or corruption of any nature).

- 3.3.5. The Applicant was referred to the copies of sick sheets on pages 4, 5 and 6 of the Respondents documents, and conceded that the stamps on her sick sheets differed from the ones found on the list of stamps provided by the Administrator of the Mbabane Government Hospital. She conceded also that the stamps on her own sick sheets (being on the 3<sup>rd</sup> July, 2015 and 4<sup>th</sup> September, 2015,) were only used for in-patients, and she herself had not been admitted by the hospital during this period. She also conceded that the stamp on the sick-sheet dated 3<sup>rd</sup> of August, 2015 was circular in shape, whilst the official out-patient stamp provided by the hospital was oval shaped.
- 3.3.6. The Applicant maintained that she could tell that there had been some “tampering” with these sick sheets, but reiterated that she was not responsible for this. She lamented that she ought to have at least been given a less harsh sentence by the employer, and suggested that a written warning would have been more appropriate in the given circumstances. She maintained also that the discrepancy in the shapes of the stamps could be attributed to the fact that on the 4<sup>th</sup> of September, 2015, her daughter’s maid had dealt with the paperwork on her behalf.

### **THE TESTIMONY OF MR SIFISO MKHATJWA**

- 3.3.7. The Applicant testified under oath that he was employed by the Respondent in the year 2008, and at the time of his dismissal he held the position of Shift Supervisor. According to the Applicant he had also been dismissed for an offence similar to that pertaining to the previous witness/Applicant. The Applicant testified that he was charged and subjected to a disciplinary hearing for allegedly submitting to his employer a forged sick-note, which was supposedly signed by the Senior Medical Officer. According to the charge sheet the Applicant was granted three (3) days off work pursuant to the dictates of the said sick-note, and this took place on the 23<sup>rd</sup> of September, 2015.
- 3.3.8. The Applicant stated that he was dismissed after being found guilty, which finding was upheld, even after an appeal hearing was held. He received a letter of dismissal on the 5<sup>th</sup> of November, 2015. The Applicant lamented that at the disciplinary hearing he had not been given any documents to assist him in defending himself against the charges levelled against him. He stated that he had been represented at the hearing, but the evidence that the Respondent had acquired from the Mbabane Government pertaining to the authenticity of the sick sheets had not been availed to him.
- 3.3.9. The Applicant testified that he had always maintained a good work ethic, and had previously held a clean



disciplinary record at the workplace. The Applicant lamented that it had only been after the disciplinary hearing had been completed that the employer availed the evidence (document) from the Government Hospital; and this was at the point that he collected the verdict of the hearing. He explained that this had crippled his endeavours to properly prepare his defence against the allegations levelled against him by the employer. He also denied that he had ever engaged in the forgery of the said sick sheet.

- 3.3.10. During the cross-examination, the Applicant was asked if he understood the charge against him, and he admitted that he did not quite understand the charge. He was asked which doctor he had been treated by? He explained that he does not know the doctor. It was put to him that the doctor who had ostensibly treated him, judging by the signature on the sicknote, is actually a gynaecologist, hence he could not have been seen by this doctor at all since he is male. The Applicant stated that he was not aware of this. It was also put to him that the Respondent's representative had been instructed that there was a discrepancy between the official stamps used by the hospital for outpatients, and the stamp that appears on his sicksheet. The Applicant acknowledged that indeed the stamps were different, but pointed out that although his sick sheet bore the stamp of the Senior Medical Officer, he had no knowledge that there was any forgery in all this because he had asked a certain lady who works at the hospital to

get his sicksheet stamped. He stated that he had trusted that she would acquire the correct stamp for him.

- 3.3.11. Even during re-examination the Applicant maintained that he had not personally forged the stamps on the sick sheets. He lamented that although there was something ontoward about the stamp on his sick sheet, but he should not be held accountable for this.

### **THE TESTIMONY OF MR BONGANI MBHAMALI**

- 3.3.12. The Applicant testified that he was employed by the Respondent as a Chef in October, 2012. He testified that he was dismissed on the 5<sup>th</sup> of November, 2015 for allegedly submitting a forged sick note to his employer. He denied that he had forged the sicknote. He stated that he was represented by Nothando Dlamini, just like all his other Co-Applicants, and admitted that the employer had afforded him all of his rights at the said hearing.
- 3.3.13. The Applicant stated that he did however; believe that his ability to prepare his defence had been impeded by the fact that the documents from the Mbabane Government Hospital bearing the verification of stamps had not been availed to him before the hearing. He stated that he only got a copy of the document at the appeal hearing. He stated that since he is the breadwinner at his home, and is responsible for the upkeep of his child, and ailing mother, he desired an award in terms of the claims made in the Report of Dispute Form.

- 3.3.14. The Applicant stated that he had actually acquired the sick sheet because he had to care for his sick mother. He admitted that he himself had not been ill. He stated that he had actually taken his mother to the hospital at the material time. Even during cross-examination the Applicant stated that he had acquired the document solely for the purpose of presenting the document (sicksheet) to the employer under the pretext that he was the one who had been attended to at the hospital, when in fact it was his mother.
- 3.3.15. The Applicant was referred to page 15 of the Respondent's documents, being the Minutes of his Disciplinary Hearing. In the said minutes, the Applicant was said to have paid a lady who is a Security Guard to help him acquire a sick sheet so that he could get time off work to tend to his sick mother. In the minutes the Applicant is said to have admitted that he had done wrong, and that he had followed improper channels to acquire the said sick sheet. The Applicant stated that he had indeed made this admission at the disciplinary hearing, but he had done so because his Manager at the time, Mr Wonder Dlamini convinced him that if he admitted that he had forged the sick sheet then he could go back to work sooner.
- 3.3.16. The Applicant was also referred to the document containing the verification of official stamps used at the Mbabane Government Hospital. He was shown that the stamp on his sick note was different from the official stamps used at the hospital. The Applicant disputed this and maintained that he had acquired his from the

Mbabane Government Hospital as well. He admitted that he had never been treated at the Mbabane Government Hospital, and that this had been his first visit to that place. He continued to lament that he had not been there to get the said verification of stamps before the hearing commenced, but had been taken to the said hospital by the Respondent's Management when the matter was still being investigated.

**THE TESTIMONY OF NONHLANHLA NOSISA MKHWAMUBI**

- 3.3.17. The Applicant testified under oath that she was employed by the Respondent in the year 2009, and at the time of her dismissal, she held the position of Expeditor. According to the Applicant she too was dismissed for submitting a forged sick sheet on the 5<sup>th</sup> of November, 2015. She denied that he had forged the said sick sheet. She explained that she had taken her sick mother-in-law to hospital. She explained that she herself had not been ill in any way.
- 3.3.18. The Applicant stated that she had acquired the sick sheet from the Mbabane Government Hospital, and was given three days off work. She stated that she used those days off to care for her mother-in-law. She explained that she herself had not been ill in any way.
- 3.3.19. The Applicant stated that she had acquired the sick sheet from the Mbabane Government Hospital, and was given three days off to care for her mother-in-law. She explained that when she was confronted by her

Manager, Wonder Dlamini about the inauthentic stamp on her sick sheet, she had told him that she is not used to the procedures at the hospital as she usually uses a private doctor. The Applicant stated that she was convinced by her Manager, Wonder Dlamini, to admit to the offence when she was charged with misconduct by the employer. She stated that Mr Dlamini had told her that if she made the admission, the employer would be lenient, and she could return to work sooner.

3.3.20. She stated that she was represented by Nothando Dlamini at the disciplinary hearing, but lamented that the report containing the verification of stamps from the hospital was not availed to her before the hearing. She stated that she had only been able to have sight of the document at the disciplinary hearing, and this prejudiced her because she could not properly prepare her defence. During cross-examination the Applicant admitted that she had signed the standard contract of employment.

3.3.21. It was put to her that the employer was justified in dismissing her because she had been given time off work, to the employer's detriment yet she was not even sick. She stated that she had acquired the sick sheet because someone had told her that this was allowed at the workplace. She denied that she had forged the sick note, and maintained that she was not even aware that the stamp affixed on the sick sheet was not genuine. The Applicant was referred to page 227 of the Respondent's documents. She was shown a letter written to the employer by the President of the Trade

Union that was representing her at the proceedings (SEIWU). According to the letter, Mr Mashumi Shongwe appealed to the employer to desist from disciplining the Applicants, whilst acknowledging their wrong doing. The President duly put forward a proposal to the employer to assist in recovering all the monies paid to the Applicant's unwarrantedly during their fraudulently obtained "sick days". The Applicant stated that she could not say anything about the letter since she knew nothing about it.

#### **THE TESTIMONY OF MS NELISIWE VILAKATI**

- 3.3.22. The Applicant testified under oath that she was employed by the Respondent as a Cashier in February, 2003. She stated that she was dismissed from this position on the 5<sup>th</sup> of November, 2015. She stated that she had also been dismissed for submitting a forged sicksheet, a document through which she got two (2) days off from work. According to the Applicant her employer had told her to admit to committing the offence. She stated that in retrospect, she regretted the action of admitting to this because she had obtained the sick sheet from the Mbabane Government Hospital, and therefore it was not a forgery. She referred to her sick sheet (a copy thereof) dated 25<sup>th</sup> July, 2015.
- 3.3.23. The Applicant stated that in actual fact she had not been ill at all on the said date, but she had taken her sick

child to the hospital. She testified that her child had to be taken to a traditional healer (supposedly on the advice of one of the hospital's nurses). The Applicant testified that the nurse at the hospital advised her to secure herself a sick sheet. She argued that the stamp on her sick sheet had been acquired from the Mbabane Government Hospital so it not have been a forgery as far as she is concerned. The Applicant lamented, just as the other Applicants before her, that the employer had failed to provide her with the stamp verification documentation from the hospital before the disciplinary hearing. In the same breath, she averred that she had not been afforded the right to answer to the charge against her because she was dismissed without being subjected to a disciplinary hearing.

- 3.3.24. During cross-examination the Applicant finally admitted that she had been subjected to a disciplinary hearing, and that she too had been represented by Ms Nothando Dlamini. The Applicant was also referred to page 55 of the minutes of her disciplinary hearing, where it clearly shows that she was presented with the stamp verification report at the disciplinary hearing. The Applicant then changed her tune and admitted that same had been availed to her, but still insisted that she did not see it. It was put to her that the stamp on her sick sheet was not genuine, because the hospital no longer uses this stamp. The Applicant disagreed with this assertion, she maintained that the stamp on her sick sheet was from the same hospital, so it had to be genuine.

### **THE TESTIMONY OF MS THULI MAHLALELA**

- 3.3.25. The Applicant testified under oath that she was employed by the Respondent in the year 2008. She stated that she was charged and dismissed for having forged a sick sheet on the 6<sup>th</sup> of March, 2015. According to the Applicant she was dismissed after a disciplinary hearing, and the letter of termination was dated 14<sup>th</sup> October, 2015. The Applicant denied that she had forged the sick sheet because on the day in question she had actually visited the hospital.
- 3.3.26. The Applicant also lamented about not being able to prepare her defence because she was not able to have sight of the stamp verification report before the disciplinary hearing. She did however, testify that she and the other Applicants had been taken to the hospital when the Management of the Respondent was conducting their investigation. She explained that the “ladies” at the hospital had disputed the authenticity of the stamps on the sick notes. According to the Applicant, the hospital staff stated that the stamps were not the ones currently in use.
- 3.3.27. During cross-examination, the Applicant was shown two different copies of sick notes she had submitted to the employer (one dated 9 January, 2015, and the disputed sick note dated 6 March, 2015). It was pointed out to her that the stamp of the 9<sup>th</sup> January, was the correct, and genuine stamp, and looked very different from the one of the 6<sup>th</sup> of March, 2015. She acknowledged the difference, but stated that she was not aware that the



stamp on the disputed sick sheet was no longer in use, and when it ceased to be in use. She stated that whilst she was sitting on the benches at the hospital, she paid someone E20.00 to go and acquire the sick sheet for her. She stated that in her knowledge that was the official fee that is payable on weekends at the hospital.

### **THE TESTIMONY OF MS MUMCY VILAKATI**

- 3.3.28. The Applicant herein testified under oath that she was employed as a Cashier, and had been engaged by the Respondent in September, 2009. She testified that she had been charged with submitting a forged sick sheet to her employer, and in her perspective this was incorrect because she had actually been to the hospital on the 15<sup>th</sup> of August, 2015 (being the date stamped on the sick note). The Applicant stated that she had been subjected to a disciplinary hearing, at which she had been represented by Ms Nothando Dlamini. She testified that she was dismissed on the 5<sup>th</sup> of November, 2015.
- 3.3.29. She lamented that she and her representative were unable to effectively prepare for the hearing, and to build a good defence case because she had been deprived of the hospital stamp verification report before the proceedings. The Applicant testified that she had only received the said document during the hearing.
- 3.3.30. She explained that she had pleaded guilty to the charges leveled against her at the disciplinary enquiry because Wonder Dlamini, her Manager told her that this would expedite the proceedings, and she could go back to work soon thereafter. She stated that she had not

forged the sicknote because she had actually visited the hospital on the day in question, and she could not have forged the stamp because she lacked the capacity to do so since she was not the custodian of the stamps.

3.3.31. During cross-examination the Applicant was referred to the Minutes of the Disciplinary Hearing wherein it was recorded that she had testified (under oath) at the proceedings that she had actually been in Nelspruit, attending her sister's funeral on the 15<sup>th</sup> of August, 2015. It was also pointed out to her that she had testified that she had called the number, 7685401 to acquire a sick sheet from the person who answered the phone. The Applicant was asked why she did not state all of this at the arbitration proceedings.

3.3.32. The Applicant testified that she had fabricated the story about the funeral because she felt it was necessary to be inventive, and to create a story that complemented her guilty plea. It was put to her that she had been under oath at the disciplinary hearing, yet she was admitting that she did not tell the truth at the proceedings. The Applicant admitted that she had indeed lied at those proceedings, despite taking the oath before hand. It was put to her that she is an unreliable witness and that she was lying under oath even at the arbitration proceedings. She insisted that she was not guilty of forgery.

### **THE TESTIMONY OF MS NONTSIKELELO NGWENYA**

3.3.33. The Applicant testified under oath that she was employed on the 1<sup>st</sup> of October, 2008 as a Cashier at the

Respondent's restaurant. According to the Applicant, she was dismissed on the 16<sup>th</sup> of December, 2015 for the offence of submitting a forged sick note. She stated that she had not forged the sick sheet dated 15<sup>th</sup> August, 2015 because she had actually visited the hospital on the said day to get treatment for an illness.

- 3.3.34. The Applicant testified that she had pleaded guilty at the disciplinary hearing simply because Wonder Dlamini, the Manager had advised her to do this. She stated that she had asked someone at the Mbabane Government Hospital to get her a sick sheet because the lines were long, and she had been running late. She stated that she suffers from piles, and even the medication at the hospital does not usually help her condition so she gets her own medication from a pharmacy in town. She explained that she took the sick sheet that she obtained from the person she dealt with at the hospital, and proceeded to go and purchase her own medicine at the pharmacy in town. She explained that she had needed the day off from work to rest.
- 3.3.35. She stated that she believed that she was not afforded her right to properly prepare her defence because she and her representative had only received the stamp verification report during the hearing. She admitted that she had pleaded guilty to the misconduct she had been charged with, but maintained that this had been done to please her Manager, Wonder Dlamini.
- 3.3.36. During the cross-examination the Applicant reiterated that she does not, as a norm, go to the Mbabane

Government Hospital. She explained that she usually goes to a local pharmacy in town whenever she is unwell. She explained further that on the day in question she had not followed all of the procedures for getting medical attention at the hospital, even though she does know what the procedure is. She testified that the lines had been very long, and she was too unwell to remain in the queue, hence she then asked “someone” to get her a sick sheet. She described the individual to be a male dressed in a grey nurse’s uniform which.

- 3.3.37. She was unable to explain why the stamp on her own sick sheet differed from the ones on the official stamp verification document. She maintained however, that the person who obtained the sick note for her worked at the hospital. She was asked what difference it would have made to her defence case had she received the stamp verification report before the disciplinary hearing. She stated that she could have gone to the hospital to help them (the officials at the hospital) to look for all of their stamps because she believed that her own stamp was indeed authentic. It was put to her that she had told lies at the disciplinary hearing and yet she had been under oath by pleading guilty, yet she alleged that she was not guilty at the arbitration hearing. The Applicant admitted that she had lied under oath because Wonder Dlamini told her to lie.

### **THE TESTIMONY OF MR NDUDUZO MDLULI**

- 3.3.38. The Applicant testified under oath that he was employed as a Cook by the Respondent. He testified that he was

employed by the Respondent in the month of June, 2009. He stated that he was dismissed on the 5<sup>th</sup> of November, 2015 after being subjected to a disciplinary hearing for submitting a number of sick sheets which were allegedly forged. The said sick notes were dated as follows:-

- a) 23/06/2015
- b) 30/06/2015
- c) 21/07/2015
- d) 09/09/2015

3.3.39. The Applicant testified that on the 23<sup>rd</sup> of June, 2015 he had actually been at work, and the name on the sick sheet belonged to one “Mduduzi Mdluli”, and not to him. He went on to testify that on all the other days, he had been unwell and had presented himself for treatment at the Mbabane Government Hospital. He testified that he had followed all the requisite procedures for acquiring a valid sick sheet at the hospital. The Witness during cross-examination, was asked if he had taken an oath when he testified during the disciplinary hearing? The Applicant stated that he did not recall if he had done so. He was also asked if he recalled what he had actually said at that hearing? The Applicant stated that he recalled well, and his testimony had virtually been the same as what he stated at the arbitration proceedings.

3.3.40. The Applicant was referred to the Minutes of the disciplinary enquiry (page 81-82) where it is reflected that the Applicant had indeed taken an oath at those proceedings. He was further referred to page 84 of the

minutes wherein the Applicant testified at the hearing that on the 9<sup>th</sup> of September, 2015 he had asked a Security Guard at the hospital to help him acquire a sick note, and this guard gave him a number which he called. The gentlemen on the other end of the line then organized for him to get a hospital prescription card, as well as a sick sheet. It was further stated that the Applicant then paid the Security Guard E20.00 (page 85). It was the Applicant's testimony at those proceedings that this was what he had done most of the time, and he rarely saw a doctor at the hospital (page 85). The Applicant was informed that the employer had afforded him the opportunity to apply for 14 days fully paid sick leave days, and 14 days on half pay that he could have lawfully acquired instead of using underhand and unlawful means to get time off from work, to which the Applicant admitted, that he had not been aware of.

- 3.3.41. The Respondent's representative put it to the Applicant that he was not a reliable Witness because he had told one story whilst under oath at the internal disciplinary proceedings, and told a contrary version at the arbitration proceedings. The Witness stated that he had lied at the disciplinary proceedings because his Manager, Wonder, had advised him to plead guilty to the offence so that he could cut short the proceedings and return to work. He was asked where this discussion had taken place, and he said that this had taken place at the kitchen at the Respondent's premises. He testified with his head bowed at all times, and did not

display a very convincing demeanor, and was always stammering, and quite evasive in his responses.

3.3.42. The Applicant decried the fact that he had not been issued with the stamp verification report from the hospital before the hearing. He stated that this hampered his ability to prepare his defence, although he had been represented by Nothando Dlamini at the hearing. He could not explain how he could have influenced the preparation of the stamp verification report, nor if he could have unearthed any evidence to exonerate himself. It was put to him that the Administrator of the hospital had prepared the report, and stated therein that the stamps on his sick sheets were no longer in use at the hospital. The Applicant could not explain how receipt of the stamp verification report before the hearing would, or could have assisted him.

3.3.43. The Applicant was asked if he had thought of what he could do to assist his case since he was now in possession of the stamp verification report? The Applicant acknowledged that he still was unable to think of what to do about the report, or how he could discredit the veracity of this document, and its contents.

#### **THE TESTIMONY OF MS NOTHANDO DLAMINI**

3.3.44. The Witness testified under oath that she is employed by the Respondent, and she is also the shop steward at the Respondent's company. She testified that she had represented a total number of fourteen (14) employees of the Respondent during a disciplinary process where

they were charged with submitting forged sick sheets to the employer. The Witness testified that those employees (14 in number) included the Applicants in *casu*.

3.3.45. She testified that she had occasion to represent one particular employee, by the name of Trevor Gule, and at a meeting with Mr Emmanuel Du Pont an interesting conversation had taken place. The Witness testified that the said Manager, Mr Du Pont had advised the employee in question (Mr Trevor Gule) to plead guilty so that Mr Pimenta (the Proprietor of the Respondent enterprise) would be lenient in the manner in which he dealt with his case. The Witness went on to say that she had the proceeded to go to the rest of the Applicants and told them that if they pleaded guilty to the charges against them, Mr Du Pont would approach Mr Pimenta, and urge him to treat their cases in a lenient manner. She confirmed that she had been with the said Mr Gule when he met with Mr Du Pont.

3.3.46. The Witness further confirmed that the stamp verification report had been produced by the employer at the disciplinary hearing, and there had been no time for the employees to “do anything” about the contents of the said report prior to the hearing. During the cross-examination the Witness was asked what she would have liked to see happen regarding the production of the stamp verification report at the hearing. The Witness stated that she believed that all the Applicants should have been given the opportunity to go to the hospital. The Respondent’s representative asked the



representative why she had not asked for a postponement during the hearing to facilitate this trip to the hospital. She admitted that she did not think to do this at the time.

- 3.3.47. The Respondent's representative asked the Witness what she would have done about the report had she and the Applicants received the stamp verification report before the hearing. She stated that she would have liked to asked the official who prepared the report why the stamps were no longer in use. She could not however explain why she and the other Union officials (including the Applicant's current representative) failed to go to the hospital to do this since the hearing took place. She was also referred to the letter that was authorized by Mr Mashumi Shongwe (The President of the Trade Union) wherein he admitted to the fact that the employees were guilty of the offences leveled against them, and tried to plead for leniency on their behalf. The Witness stated that she was not aware of the said letter, and its contents. She explained also that they, as union officials, have never discussed the said letter or any of its contents.

### **THE TESTIMONY OF WONDER DLAMINI**

- 3.3.48. The Witness testified under oath that he was previously employed by the Respondent as Restaurant General Manager of the Mbabane Branch. He explained that he held a managerial position at the Respondent's company form the year 2009, to March, 2017 when he left the employ of the Respondent. He testified that he

had been involved in the investigation, and had also testified in the disciplinary hearings of the current Applicants, as well as others that had reported a dispute with the Commission, under a separate case number.

3.3.49. He explained that overall there had been forty (40) employees that the employer had discovered to have submitted forged sick sheets. He stated that the Management team of the Respondent had decided to prosecute only fourteen for the offences, as a tactical move because the business was in the process of being sold. He stated that he and Mr Du Pont had colluded to get rid of the employees who had been with the company for a long time, and whose earnings were quite sizeable. He explained that they also focused on the people who were laggards, and did not get along with the Managerial team. He stated that in his view none of the employees who had been disciplined and subsequently dismissed had been guilty. He stated that the people who were selected had been targeted because the company needed to make an example out of them, so as to dissuade the rest of the workforce from committing similar offences. He stated that he had spoken to the accused employees before the disciplinary hearings began, and he convinced them to plead guilty, because the Management of the company would forgive them, and put them back to work soon after the disciplinary hearings had been held.

3.3.50. The Witness confirmed that he had consulted the Administrator of the Government Hospital, and acquired the stamp verification report from her (one Ms Cebile

Dlamini). He explained that the stamps were said to be inauthentic, as the Administrator compared these to the ones presently in use at the hospital currently, and those that appeared on the sick notes. The Witness confirmed that he had testified at the disciplinary hearings of the Applicant's herein, and stated that he was withdrawing that testimony, despite having sworn to tell the truth at those proceedings. He stated that he was well aware that what he had said at the disciplinary hearings was in conflict with, and was indeed quite different with his testimony at the present arbitration proceedings. He stated that he was withdrawing the former testimony because at the time he was testifying in support of the employer's case.

- 3.3.51. During cross-examination the Witness admitted that he had testified not only at the present Applicants disciplinary hearings, but also at the arbitration proceedings pertaining to other Applicants charged with similar offences. He admitted also that he had been under oath at all of these proceedings, and that although he was under oath during these proceedings, he had testified that all the Applicants (employees) of the Respondent had indeed committed the offences of submitting forged sick sheets. He stated that the testimonies beforehand had been influenced by the fact that he was an employee of the Respondent at the time and was between a rock and a hard place (bengiseluphaceni). It was put to him that he was lying under oath even at the proceedings, and his response was; "you can put it like that if you like".

- 3.3.52. It was further put to him that he was lying (at the current proceedings) under oath because he was aggrieved, and had a grudge against the employer because he had been dismissed for a number of offences which related to dishonesty. He admitted that he had been dismissed, but denied that he was prompted by spite against the employer to testify on behalf of the present Applicants. He maintained that the Applicants has not committed any offence, and stated that he disputed the contents of the hospital stamp verification report. When he was questioned by the Arbitrator about whether the document (stamp verification report) was prepared by the relevant authority at the hospital. He explained that indeed he had consulted with the Hospital Administrator, Ms Cebile Dlamini.
- 3.3.53. The Witness was asked if he understood the gravity of lying under oath? He explained that he was only bound to speak on matters that were convenient to him (tintfo letingangifaki eluphaceni). He was asked how much of the testimony that he delivered, under oath at the arbitration (the present) proceedings could be relied upon? The Witness stated that the Arbitrator was at liberty to choose which aspects to take as being the truth.

### **3.4. THE RESPONDENT'S CASE**

#### **THE TESTIMONY OF MR EMMANUEL DU PONT**

- 3.4.1. The Witness testified that he is employed at the Respondent's company as the Area Coach/Manager. He explained that in or about September, 2015 it was brought to his attention by the Manager of the Mbabane Branch, 2015 that there was a need for employees to be required to work overtime to cover for the absence of about four (4) employees. According to the Witness he had been informed by the said Manager that the four employees were all sick, and had submitted sick sheets to this effect. He stated that he then asked the Manager to avail the said sick sheets to him, and upon scrutiny he realized that the various sick sheets bore different stamps, and he then become suspicious because they were issued by the same hospital.
- 3.4.2. The Witness testified that, it was at this point that he authorized the Manager, Wonder Dlamini to institute and conduct a thorough investigation on all of this. He explained that Mr Dlamini had duly conducted the investigation, as directed. He explained that Wonder took some of the concerned employees to the Mbabane Government Hospital where the Administrator of the institution assisted him by verifying the signatures of doctors, and also by scrutinizing the stamps affixed on the sick sheets. He presented a bundle of sick sheets as part of his evidence, as well as the stamp verification report obtained from the hospital. According to the Witness, it was found that of the entire batch of sick notes of more than thirty, the Administrator proceeded

to isolate those that had inauthentic stamps and signature. He stated that ultimately the Administrator came up with a list of fourteen (14) employees who presented falsified sick sheets. He explained that for that weekend in particular when his Manager approached him with the request to have employees work overtime, it was discovered that all of those sick sheets were not valid.

- 3.4.3. The Witness testified that it was based on the findings made in the Administrator's report that the employer decided to institute disciplinary proceedings against the fourteen employees who were implicated. He explained that despite the fact that the Respondent has several outlets in various regions of the country, the Mbabane outlet was the most affected by this problem of employees absencing themselves enmasse, and submitting forged sicknotes. He explained that he had even, on occasion seen some of the employees who were said to be off-sick, loitering around, and even drinking alcohol within the vicinity of the store.
- 3.4.4. He explained that the Management of the Respondent had experienced these problems even in Nhlanguano, Pigg's Peak and Ezulwini. He explained that in Ezulwini and Pigg's Peak, the employees in question disappeared from work before disciplinary proceedings could be commenced. The Witness testified that the employee from Nhlanguano was duly subjected to a disciplinary enquiry and was subsequently dismissed after a finding of guilt was made against that employee.

- 3.4.5. The Witness testified that during the disciplinary hearings, a number of the Applicants in casu, had actually confessed, and admitted their guilt, whilst Ndunduzo Mdluli had confessed that he acquired forged sick notes so that he could get time off to go and write examinations. He stated that he had been disturbed by all of this since the said Mr Mdluli could have simply applied for study leave in an above board manner. He said that most of the Applicants herein admitted that they had acquired the sick sheets, and paid for same along the hospital corridors, and/ or from certain Security Guards.
- 3.4.6. During cross-examination, the Witness explained that he had been prompted by the variance in the appearance of the stamps submitted to him by Wonder Dlamini to actually launch an investigation into the authenticity or otherwise of the sick sheets. He explained that the investigation had taken about half a year, and out of the total number of employees who were investigated only fourteen (14) such employees were found to have submitted forged sick sheets. He explained that the decision to discipline the concerned employees was founded solely upon the findings of the report made by the Administrator of the hospital, and that is how the fourteen employees were identified. He explained further that he had actually been quite dismayed by the fact that the report revealed that some of the most hard-working of the staff members had to be disciplined. He further lamented that even some employees who

had submitted just a single forged sick note had also fallen within that category.

- 3.4.7. The Witness was asked whether he spoke to the Applicants prior to the disciplinary hearing, and told them to ask for leniency (*bacele shwele*) at the hearing? The Witness explained that he had been trained never to interfere with witnesses, and he had no authority to ask the employees to advance mitigating submissions as this was the domain of the Chairperson of the hearings. He explained that it was the President of the Trade Union that represents the Applicants that wrote to the Respondent's Management to ask that the Applicants should be treated with a measure of leniency. He denied that he had spoken to any of the employees before the hearing. He explained that the employees had dealt with Wonder Dlamini during the investigation, and some had agreed to cooperate by going with him to the hospital at the various stages of investigation, whilst some had refused to do so.

#### **THE TESTIMONY OF MS CEBILE DLAMINI**

- 3.4.8. The Witness testified under oath that she is presently employed as the Health Administrator at the Mbabane Government Hospital. She stated that she was consulted by the Respondent's former Manager, Mr Wonder Dlamini regarding the authenticity of a number of sick notes in the year 2015. She stated that she required Mr Dlamini to make a written request for the evaluation of the said sick notes. She explained the stages that she



went through in verifying the authenticity of the sick sheets submitted to her.

- 3.4.9. She explained that she had referred to the hospital's registers where the names of patients are captured when they come into the hospital, and when they get their medication after seeing the doctor or nurse (as the case may be when the patient pays a visit to the hospital at night). She referred to the sick notes submitted as part of the Applicants in casu. She stated that she had found that the sick sheets were not authentic. Some had the surnames of current doctors, but when she verified she found that the doctors denied that they had signed the sick sheets, and in one case she found that the doctor in question, one Dr Ndlangamandla no longer worked at the hospital (he had left in 2009). She explained that the time of the visit is always recorded by the doctor concerned, as well as the date of the visit, and if the patient needs to come back for a review. She explained that the doctor would always need to get a red stamp on their sick sheets, and the registers were always kept updated.
- 3.4.10. She explained that hospital attendance, as well as sick sheets, as a norm, have to be stamped at the Senior Medical Officer's office, and signed by him as well. She explained that there is only one such stamp that is official use at the hospital, and it is kept at the office of the Senior Medical Officer. She pointed out that it was highly irregular for any of the hospital personnel, barring the nurses at the Out Patient Department, and Medical Officers (doctors) to give out sick notes to an individual.

She reacted in a very negative manner when it was put to her that some of the Applicants herein had obtained their sick sheets from non-descript people along the corridors of the hospital and/ or Security Guards. She stated that as per proper procedure, nurses at the Out-Patient Department could only grant a patient one (1) sick day off from work, whilst doctors could grant anything over and above a day. She pointed out that regardless of who issued the sick sheet, procedure dictated that the sick note should be stamped with the Senior Medical Officer's stamp.

3.4.11. The witness stated that the hospital had encountered problems with some of their personnel at the hospital who had unlawfully acquired possession of the Senior Medical Officer's stamp. She stated that three people had been arrested, and this also entailed disciplinary proceedings at the workplace that led to these people being dismissed from employment. She stated that this incident took place in or about the year 2015, at or about the same time that the Respondent's employees also acquired dubious sick notes allegedly from the Government Hospital. She stated that the police had taken those stamps that had been illegally acquired from the accused personnel, and the hospital had been compelled to change the Senior Medical Officer's stamp in particular.

3.4.12.1 During cross-examination the Witness clarified that in all the stamps that appear in the Applicants' sick notes in casu, she could succinctly and confidently state that the hospital

had never used the stamps that appeared on these in that year. She explained that the official hospital Out-Patient Department (OPD) stamp is oval in shape (labeled “Accounts”). The Witness stated further that even in the year 2015 the oval shaped stamp was in use. She vehemently refuted that the round shaped stamps on all the Applicants’ sick notes in casu were in use at all during that period, date. She went on to clarify that the said oval shape had been in use since 2013. The Witness proceeded to point out that the procedure at the hospital was the Senior Medical Officer’s stamp had to be changed every ten (10) years, and they had a big round shaped stamp. She pointed out that the one that appears on the Applicant’s sick sheets (such as Sifiso Mkhathjwa’s sick note) was considerably smaller in size, and the letters also were quite small. She stated that there was a glaring difference in not only the size of the stamp itself, but also the letters. The only similarity was in the round shape, she pointed out.

#### **4. ANALYSIS OF EVIDENCE**

4.1. It is common cause that at the time of the dismissal, the Applicants herein were employees to whom **Section 35** of the **Employment Act, No. 5 of 1980 (as amended)** applied. The Applicants could therefore not be dismissed for reasons other than those that are sanctioned by **Section 42 (2)** of the same **Act**. The Applicants were herein charged with submitting forged sick notes to their Manager on various dates. It is also

common cause that one of the Applicants, a Mr Wandile Dlamini was not present at any of the various set down for the arbitration hearings, and did not testify at the said proceedings.

4.2. The Applicants herein, in concert, denied that they had committed any wrong doing. The common thread in their various testimonies was that the stamps that are alleged by the Respondent to be inauthentic, were obtained from the Mbabane Government Hospital. It was their position that the stamps could therefore not be anything other than genuine because they are all from the said hospital, and the lettering stating this was sufficient proof in their perspective, that these were indeed authentic. The Applicants further alleged that their dismissals are also procedurally unfair on account of the fact that not only were they not provided with the hospital stamp verification report prior to the disciplinary hearings, thus hampering their ability to prepare their defence cases, but also because their Manager, Mr Wonder Dlamini had urged them all to plead guilty to the charges levelled against them. According to the various testimonies, the Applicants were told by the said Wonder Dlamini that the employer would be lenient, and would allow them to return to work sooner if they pleaded guilty.

4.3. Suffice it to say that the Respondent refuted these claims, and called Witnesses to support their assertions. The bone of contention herein is, it can be neatly said, the fact that the Respondents allege that the stamps affixed on the various sick sheets that were submitted by the Applicants were not authentic, thus rendering the sick sheets forgeries. The Respondent's witness Mr Emmanuel Du Pont stated that he

was prompted to institute the investigation into the genuineness, or otherwise of the Applicants sick sheets due to the different appearance of the stamps on the sick sheets that they had obtained from the Applicants, as well as other employees, and yet all these sick notes purported to be from the same hospital.

4.4. The authority from the Mbabane Government Hospital who actually prepared the stamp verification report, one Ms Cebile Dlamini, who is also the Administrator of this institution gave her sworn testimony at the arbitration proceedings. She went to great lengths to explain that the stamps that appear on all of the sick sheets submitted as part of the evidence of both parties, and which had been submitted to her for analysis in the year 2015 were not stamps that were in use at the hospital. She explained that these stamps had been discontinued. She pointed out that the hospital currently uses an oval shaped stamp for sick sheets obtained from the Out-Patient Department (OPD). She explained that nurses at the hospital could only grant one day off sick, and only the Medical Officers (Doctors) can grant more than one day off sick. She pointed out that even then, that sick sheet needed to be stamped by the Senior Medical Officer, with the requisite stamp which is kept at his office. She pointed out that in the case of the sick sheets pertaining to the Applicants, the tendency was that they were being given more than one day off, and there was no stamp from the Senior Medical Officer.

4.5. The evidence of this official from the Mbabane Government Hospital must be allowed to stand since even during cross-examination, the Applicants' representative was not able to controvert her testimony. Furthermore, even Mr Wonder

Dlamini; the Respondent's erstwhile Manager, agreed that he had indeed approached the proper authority when he sought Ms Cebile Dlamini's help regarding the verification of the stamps on the sick notes of the Applicants. Admittedly the rest of Mr Dlamini's testimony cannot readily be relied upon due to the fact that he boldly admitted that he does not appreciate the value of testifying under oath. According to this gentleman, one can simply choose to tell untruths whilst under oath with impunity. This he did when he told the Arbitrator that he had not spoken the truth when he testified during the disciplinary hearings of the Applicants. Mr Dlamini clearly is not a man who can be taken at his word, as he is more than willing to commit the offence of perjury when he thinks this will suit his purposes at that given point in time.

4.6. Another loophole in the case of the Applicants is that several of the Applicants admitted that they had not actually been ill when they acquired the said sick sheets. Mr Bongani Mbhamali stated that his mother was actually sick at the time, and he was not at all ill at the given time. Ms Nonhlanhla Mkhwamubi also admitted that she had obtained the sick sheet, not because she had been attended to at the hospital, but because her mother-in-law was ill. Indeed, even Ms Thembi Dlamini admitted that the stamps on her sick sheet for the 3<sup>rd</sup> of July, and the 4<sup>th</sup> of September, 2015 were all meant for "In-Patients", and she herself was actually an "Out-Patient" at the time.

4.7. When all is said and done, the Applicants representative failed to disprove the submissions made by Ms Cebile Dlamini that the stamps on the sick notes, when compared with the stamp verification report she prepared were inaccurate. No contrary

version was presented to the Arbitrator at the proceedings that could, on a balance of probabilities, tip the scales of justice in the Applicant's favour. It is true that at their respective disciplinary hearings the Applicants pleaded guilty. This on its own, is not enough reason however, to find that they were indeed guilty. It is a firmly entrenched position in our law that the Industrial Court (by extension, the Arbitrator), does not sit as a Court of appeal, or review of internal disciplinary proceedings. Its conducts its own enquiry on the allegations, and makes its own findings **(See: Central Bank of Swaziland v Memory Matiwane: Case No. 110/93 I.C.A.)**.

- 4.8. The Applicants herein committed acts of dishonesty in that they submitted forged sick notes. This forgery was constituted by the fact that they submitted sick notes that purported to be something that they were not. That is, they were not properly issued by the Mbabane Government Hospital. This is evident from the inauthentic stamps, and the fact that an Applicant such as Mr Sifiso Mkhathswa could not explain why he was ostensibly seen to by a gynaecologist, a doctor who specialises in treating illness that afflict women, and not men such as himself.
- 4.9. The letter that was purportedly written by the Union's President, Mr Mashumi Shongwe, wherein he admits that the Applicants were guilty of wrong doing will be disregarded herein. The reason for this is that the author of the said letter did not make an appearance at the arbitration proceedings to give evidence hence it amounts to hearsay evidence. According to the ***Learned Author Grogan J, (2012), "Dismissal" page 188***, the offence of dishonesty can consist of any act or omission which entails deceit. It can include the

making of a false statement or misrepresentation. It includes even the obvious criminal offences of fraud, theft and forgery. It pertains to misconduct that is committed with the intention to deceive the employer. Indeed it is stated by the same Author in his work titled **“Workplace Law”, 10<sup>th</sup> ed, page 211**, that this kind of misconduct is so grave that it justified dismissal at first instance, regardless of the absence of prior warnings **(see also Nkomo v Pick n Pay Retailers (1989) 10 ILJ 937 (IC).**

- 4.10. In light of the foregoing, it is my finding that the dismissal of the Applicants was substantively fair in that it is in keeping with **Section 36 (6)**, which provides that it shall be fair to dismiss an employee who had been found guilty of a dishonest act. The dismissal has also been found to have been reasonable in view of the dictates of **Section 42 (2)**. The said sections are enshrined in the **Employment Act, 1980 (as amended)**.
- 4.11. The Applicants herein further decried the procedural propriety of their dismissal. The Applicants lamented that they had been deprived of access to the stamp verification report prior to the commencement of their respective disciplinary hearings. They alleged that this adversely interfered with their ability to prepare their defences. Furthermore, the Applicants alleged that they had all been misled into pleading guilty to the charges levelled against them because Mr Wonder Dlamini (their Manager at the time) had promised that they would be dealt with in a lenient manner by the employer if they did this.
- 4.12. **The Code of Good Practice: Termination of Employment (clause 3.6.2.): Industrial Relations Act, 2000 (as**



**amended**) stipulates that the dismissal of an employee must also be in accordance with fair procedure. Decided case law for this requirement cannot be exhausted (**see: Alpheous Thobela Dlamini v Dalcru Agricultural Holdings v Principal Secretary, Ministry of Education & 3 Others, I.C. Case No. 207/06.**).

- 4.13. In *casu*, the minimum standards developed in ***Oscar Mamba v Swaziland Development & Savings Bank, I.C. Case No. 81/96***, by Judge Collins Parker appear to have been adhered to (these pertaining to adequate notice, representation, the right to call and to cross-examine witnesses inter alia). However, the Applicants in *casu* still alleges that there was procedural unfairness. The allegation that Mr Wonder Dlamini convinced the Applicants to plead guilty cannot be upheld. This is due to the conflicting statements that were made by the Applicants' representative at the hearing, Ms Nothando Dlamini. According to Ms Dlamini, it had actually been Mr Emmanuel Du Pont who had been overheard by herself, telling a certain gentlemen whose surname is Gule to plead guilty at his disciplinary hearing. Mr Emmanuel Du Pont in his own testimony, that went uncontroverted under cross-examination, denied that he made such statements to any of the Applicants because he had been trained never to interfere with witnesses. He stated that he would not have made such statements because the fate of the Applicants could only have been determined by what the chairperson of their hearings stated in the verdicts that he issued.
- 4.14. It is clearly not possible to make a finding to the effect that the Applicants were urged or prompted to plead guilty by Wonder Dlamini, because their own representative stated that she was

the one who suggested that they should plead guilty. She testified that she had done this after allegedly overhearing a discussion between Mr Du Pont and the said Mr Gule, who is not even a party to the proceedings at hand.

- 4.15. The Applicants testified that they had not been supplied with the stamp verification report before their hearings. The Applicants (in particular; Mr Ndunduzo Mabuza, and Ms Nonhlanhla Mkhwamubi) suggested that they would have gone to the Mbabane Government Hospital to look through the stamps that are available there if they had received the report before their hearings. They could not however, suggest a contrary version to the one stated in the report as prepared by Ms Cebile Dlamini. They could not even suggest how they could have controverted the contents of her report, nor possibly reveal that Ms Cebile Dlamini was somehow wrong in her findings, or even that she may have lacked the authority and/ or expertise to prepare the said report.
- 4.16. Even at the Arbitration proceedings, the Applicants representative failed to refute Ms Dlamini's allegations about the inauthenticity of the stamps. He was given this opportunity, but her version remained untainted. Even though fair procedure dictates that employees should be provided with enough information to prepare their defence, in casu it is clear that this was not properly adhered to by the Respondent. It is however, true that despite this procedural mis-step by the Respondent, the defence-case of the Applicants does not seem to have suffered much as the Applicants' representative still could not controvert the contents of the said report. This procedural mis-step will not be held against the Respondent in

casu. It is therefore my finding that the Applicants were dismissed in a substantively and procedurally fair manner.

**5. AWARD**

5.1. Having heard the evidence of both parties, the Applicants case is hereby dismissed. The Applicant's dismissals were fair in all respects.

**THUS DONE AND SIGNED AT MBABANE ON THIS .....DAY OF  
MARCH, 2018.**

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**KHONTAPHI MANZINI  
CMAC ARBITRATOR**