

**IN THE HIGH COURT OF SWAZILAND**

**(HELD AT MBABANE)**

**CASE NO.: 3235/06**

In the matter between

**LAWRENCE SIZA MALINGA**

**Applicant**

**and**

**SWAZILAND GOVERNMENT**

**1st Respondent**

**THE UNIVERSITY OF SWAZILAND**

**2nd Respondent**

**CORAM: P.Z. EBERSOHN J.**

**REASONS HANDED DOWN ON 31st OCTOBER 2006**

**FOR APPLICANT:**

**ATT. M . MABILA**

**FOR FIRST RESPONDENT:**

**MR. J. MAGAGULA**

**FOR SECOND RESPONDENT:**

**MR. Z. SHABANGU**

**REASONS FOR JUDGMENT**

**EBERSOHN J:**

[1] In this matter which came before me on an urgent basis I made the following order on the 21st September 2006:

**"1. Dispensing with the usual time limits, procedures and manner of service provided for in the Rules of the above Honourable Court and it is ordered that the matter be heard as an urgent matter.**

**2. The 1st Respondent is directed to forthwith comply with the agreement between itself and the applicant regarding the payment of Applicant's tuition (and ancillary) fees and allowances with the 2nd respondent and directing the 1st respondent to forthwith pay the Applicant's tuition (and such ancillary) fees and allowances with the 2nd respondent.**

**3. The 1st respondent is to pay the costs of the application."**

[2] I indicated that my reasons would follow later. These are the reasons.

[3] It is common cause that the applicant and the 1st respondent entered into a study loan agreement in terms whereof the 1st respondent would pay the tuition fees and allowances of the applicant for four years in order to enable him to obtain the degree Bachelor of Science.

[4] It is also common cause that the applicant became ill during about February 2006 it being the fourth and last year of his course and he was allowed by the 1st respondent and the University to temporarily withdraw from his studies and that once his condition improved he would be accepted back at the University and that the 1st respondent would re-commence paying his tuition fees and allowances.

[5] In June 2006 the applicant had recovered and the University accepted him back.

[6] To his surprise the 1st respondent refused to re-activate and/or continue paying his fees with the 2nd respondent and refuses to give him reasons therefor.

[7] The papers in this matter were served upon the 1st respondent. Instead of filing a helpful affidavit one DOCTOR SIMELANE who described himself as acting principal secretary in the Ministry of Education, merely denied that the 1st respondent undertook

the obligations and stated that the 1st respondent only agreed to pay applicant's fees with the University for a period of 4 years and that it has since discharged this obligation "as it has paid fees for the applicant for a period of four (4) years."

[8] The affairs of the Government, including that of the 1st respondent, appear on computer. It would have been easy for the 1st respondent to merely punch the computer to produce a printout regarding the agreement with the applicant and the financial position. In the replying affidavit the applicant denied that the 1st respondent fulfilled its obligations in full.

[9] The defence of the 1st respondent is thus one of confess and avoid and as such the onus was on the 1st respondent to prove what and when it paid and how it discharged its obligations. This it elected not to do.

[10] The matter was extremely urgent as the next day was the last in which the applicant could further register with the 2nd respondent.

[11] Under the circumstances the Court granted the order it did.

[12] It was explained in Court that although the 2nd respondent sent Mr. Shabangu with a watching brief on behalf of the 2nd respondent that that would not be regarded as opposing the application and the 2nd respondent was not ordered to pay any costs.

**P.Z. EBERSOHN**  
**JUDGE OF THE HIGH COURT**

