

The present application has been brought because again the 1st Respondent has failed to pay the course fees for the academic year 2003/2004.

The 1st Respondent is resisting the payment of the course fees on behalf of the Applicant as per the Bonding Agreement. It was argued on behalf of the 1st Respondent that the Agreement was entered into in error. It was argued that the 1st Respondent was under the impression that the Applicant was going to pay for the course fees on his own. The court was referred to a Memorandum dated 10th July 2002 and marked "AG1".

The Memorandum was from the Principal Secretary Ministry of Education to the Principal Secretary Ministry of Public Service and Information. In paragraph 3 of the Memorandum appears the following:

"We recommend your approval in granting Shabangu study leave (without scholarship) with pay considering his length of service of over eight years in the system. Following your approval, we recommend that he be bonded on the ground that Government is spending on him while he is at the University,"

The author of this memorandum is not the Applicant. There is no indication that a copy thereof was made to the Applicant. The memorandum is an inter-ministerial communication between two Principal Secretaries. There was no confirmatory affidavit by B.S. Ndlovu who signed the memorandum, confirming the contents thereof.

The argument on behalf of the 1st Respondent is that a different form should have been signed by the parties and not the one that was in fact signed. It was

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argued on behalf of the 1st Respondent that the form that should have been signed was the one that says "study leave with pay-without scholarship."

It was argued on behalf of the 1st Respondent that the error was iustus. The 1st Respondent's argument is however not supported by authority.

R. H. Christie in his book "The Law of Contract in South Africa" (2001) 4th edition at page 366 has this to say on this subject;

"However material the mistake, the mistaken party will not be able to escape from the contract if his mistake was due to his own fault. This principle will apply whether his fault lies in not carrying out the reasonably necessary investigations before committing himself to the contract i.e. failure to do his homework; in not bothering to read the contract before signing; in carelessly misreading one of the terms; in not bothering to have the contract explained to him in a language he can understand; in misinterpreting a clear and unambiguous term; and in fact in any circumstances in which the mistake is due to his own carelessness or inattention for he cannot claim that his error is iustus."

Clearly in this matter there was carelessness or inattention on the part of the Government official who signed the document in that he did not bother to read the contract before signing. The carelessness or inattentive on the part of the Government official who signed might also have been caused by the Memorandum from the Principal Secretary of the Ministry of Education. The words in the third paragraph thereof to the effect that:

".....Following your approval, we recommend that he be bonded on the ground

that Government is spending on him while he is at the University" (my underlining).

might have led to the Government official to blindly sign the Bonding Agreement without reading the contents thereof and without considering if that document was the right one to deal with in the circumstances of the case. Christie on the same page already referred to above goes on to say,

"If the mistake cannot be shown to be iustus it will be ignored."

The court will accordingly come to the conclusion that it has not been shown that the mistake was just. The mistake was clearly due to carelessness and inattentive on the part of the Government official who signed the Bonding Agreement. Had the Government official read the contract he would have

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realized that Government was binding herself to pay the whole of the course fees as it appears under Clause 3 thereof.

It was not argued that the contract was written in a language that the Government official did not understand.

The court will therefore come to the conclusion that the 1st Respondent is not entitled in law to resile from the contract.

The application will therefore succeed and the following order is made:

1. The 1st Respondent is to pay fully the course fees for the Applicant at the University of Swaziland for the remaining years of the course in terms of the Bonding Agreement
2. The 1st Respondent is to forthwith pay fully the course fees for the academic year 2003/2004 on or before the 6th July 2004 to enable the Applicant to obtain his results.
3. The 1st Respondent is to pay all necessary and incidental expenses of the Applicant in terms of the Bonding Agreement.
4. The 1st Respondent is to pay the Applicant during the course a salary in accordance with Establishment Circular Number 2 of the 1994.
5. The 1st Respondent is to pay costs of the Application.

The members agree,

NKOSINATHI NKONYANE

ACTING JUDGE - INDUSTRIAL COURT

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