



IN THE INDUSTRIAL COURT OF SWAZILAND

Held at Mbabane

Case No. 306/2012

In the matter between

MOSES HEZEKIEL TSABEDZE

Applicant

And

CIVIL SERVICE COMMISSION

1st Respondent

**THE PRINCIPAL SECRETARY,
MINISTRY OF NATURAL RESOURCES
AND ENERGY**

2nd Respondent

**THE PRINCIPAL SECRETARY.
MINISTRY OF PUBLIC SERVICE AND
INFORMATION**

3rd Respondent

THE ACCOUNTANT GENERAL

4th Respondent

THE ATTORNEY GENERAL

5th Respondent

Neutral citation: Moses Hezekiel Tsabedze vs Civil Service Commission
(306/2012) [2014] SZIC 9 (March 2014)

CORAM: D. MAZIBUKO (Sitting with A. Nkambule & M.T.E. Mtetwa)
(Members of the Court)

Heard: 10th OCTOBER 2013.

Delivered : 13th MARCH 2014.

Summary: *Labour Law: demand by employee for a promotion; under normal circumstances promotion of an employee falls within the prerogative of the employer. No justification for Court to usurp the employer`s power of deciding matters of promotion.*

Contract Law; Promotion of an employee varies the terms and conditions in the employment contract. A variation of the contract of employment must comply with the principles of the law of contract.

JUDGEMENT

1. The Applicant is Mr Moses Hezekiel Tsabedze, an employee of the Swaziland Government, serving under the Ministry of Natural Resources and Energy.
2. The 1st Respondent is the Civil Service Commission, a department in the Swaziland government established in terms of part 2 of chapter x of the Constitution of The Kingdom of Swaziland Act No.1/2005, hereafter referred to as the Commission.
3. The 2nd Respondent is the Principal Secretary in the Ministry of Natural Resources and Energy. The Ministry is a department within the Swaziland Government and the 2nd Respondent is a Senior Officer in that department.
4. The 3rd Respondent is the Principal Secretary in the Ministry of Public Service and Information. The ministry is a department in the Swaziland Government and the 3rd Respondent is a Senior Officer in that department.

5. The 4th Respondent is the Accountant General. The 4th Respondent is a Senior Officer in the Treasury Department of the Swaziland Government.
6. The 5th Respondent is the Attorney General an Officer authorized to represent the Swaziland Government in legal matters.
7. The Applicant has filed a Notice of Motion before Court together with a founding affidavit. The matter is opposed. The 2nd, 3rd and 5th Respondents have filed a joint answering affidavit which is deposed to by the Acting Accountant General named Fanisile Mabila. The Executive Secretary of the Commission Mr Allen McFadden has also filed an affidavit in support of the Respondents' answering affidavit.
8. The Applicant has averred that he was employed by the Swaziland Government in the year 1984, and worked as a Storekeeper in the 2nd Respondent. The Respondents do confirm in their answering affidavit that the Applicant is an employee of the Swaziland Government. The Respondents however aver that the Applicant was employed on the 1st May 1985 as a Storeman. This divergence is however not necessary to the issue that is before Court.
9. The Applicant avers that on the 3rd November 2010 he was promoted by the Commission to the position of Senior Stores Officer. This promotion increased his salary to the scale of Grade C5, which amounted to E120, 171.00 (One Hundred and Twenty Thousand One hundred and Seventy one Emalangeni) per annum.

The Applicant has annexed to his founding affidavit a letter marked MT1, which he argues is the letter in terms of which he was promoted.

10. Annexure MT1 reads as follows;

GOVERNMENT OF SWAZILAND
CIVIL SERVICE COMMISSION

Ref.CSC/15246

Date: 3rd NOVEMBER 2010

Sir /Madam,

1. I am pleased to inform you that the Civil Service Commission, has approved your promotion to the grade ofC5.....in the post ofSENIOR STORES OFFICER.... Post No.....
2. The effective date of your promotion will be3rd November 2010..... And your salary from the date will be E120,171....per annum in the Scale ...GRADE C5..... Your new increment date will beAPRIL.....
3. You will continue to be governed by General Orders and other regulations in force, or as may be amended from time to time/the terms of Agreement entered into between the Swaziland Government and yourself which is hereby varied to the extent set out in the foregoing paragraphs of this letter.
4. Graded Tax No.....(to be inserted by Ministry/Department)

I am, Sir/Madam
Your obedient Servant

MOSES H.TSABEDZE

[Signed]

A.C.McFadden
EXECUTIVE SECRETARY
CIVIL SERCE COMMISSION

throughACCOUNTANT GENERAL.....(Present Ministry/Department

5. Copies to: Ministry/Department ofTREASURY DEPARTMENT.....
6. As soon as the dated [date]of assumption of duty has been inserted in the spaces provided below, copies of this Form should be sent to the under listed offices:

P.F. No..... 15246.....

To: Accountant-General
Auditor General
Principal Secretary, Ministry of Public Service
Secretary to the Cabinet
Secretary Civil Service Commission

The conditions applicable from the effective date of promotion are as follows:

Appointment And Grade	Terms of Service (probation/contract etc)	Head No.	Responsibility Centre No.	Basic Salary	Allowance (Inducement Allowance	Incremental Date
SENIOR STORES OFFICER GRADE C5	PENSIONABLE	35	P/E	E120,171	-	APRIL

I certify that this officer assumed duty in his new post on.....

Date.....

Signed:.....

For Officer responsible for expenditure

(Record page 13)

11. The Applicant has further supported the claim to the promotion in the following manner;
 - 11.1 The Applicant avers that in March 2011 he met the Executive Secretary to the Commission, Mr Mc Fadden on two occasions. He enquired about his promotion, and Mr McFadden told him to exercise patience regarding that matter.
 - 11.2 The Applicant stated further that in April 2011 he met the Chairman of the Commission a certain Mr Mamba who confirmed to the Applicant that he had indeed been promoted. The said Mr Mamba then referred the Applicant to the Accountant General for further assistance.
 - 11.3 The Applicant further met the Acting Accountant General a certain Mr D.D. Dube about the matter. The details of what transpired at that meeting are discussed later in this judgment.
12. The Respondents have denied the Applicant's claim that he was promoted. The Respondents have further denied that annexure MT1 is a letter of promotion.
 - 12.1 The Respondents have argued that annexure MT1 was signed by one signatory instead of two. The signing of MT1 is therefore incomplete. The absence of the second signatory signifies that the idea to promote the Applicant was discussed but not finalised. There was therefore no agreement taken by Respondents to promote the Applicant. The absence of the second signatory signifies that the idea to promote the Applicant was discussed but not finalised.
 - 12.2 The Respondents have argued further that the idea to promote the Applicant was never communicated to the Applicant.

Annexure MT1 was written by the Commission to the 3rd and 4th Respondents as well as other Government departments. There was no offer from Government which was communicated to the Applicant to promote him. The Applicant unlawfully intercepted communication that was directed to the addressees aforementioned. The Applicant cannot base his claim on information that has been obtained irregularly.

12.3 The Respondent added that on the 28th July 2011, the Commission withdrew its proposal to promote the Applicant, by memorandum dated 30th December 2011 (annexure AG1).

13. Annexure MT1 reads as follows;

“MEMORANDUM

*From: EXECUTIVE SECRETARY
CIVIL SERVICE COMMISSION*

*To: ACTING ACCOUNTANT
GENERAL*

Date: 30th December, 2011

~~*Our Ref.: CSC/15246*~~

Your Ref.:

*RE: WITHDRAWAL OF PROMOTION AS SENIOR STORES OFFICER, GRADE C5-
MR.MOSES TSABEDZE*

The above matter refers.

I am directed to inform you that the Civil Service Commission acknowledged receipt of your memorandum dated 28th July, 2011 wherein you appealed for the withdrawal of promotion in respect of Mr. Moses Tsabedze as Senior Stores Officer. The Commission at its meeting held on the 2nd August, 2011 deliberated on the matter thereof and thereafter, approved that his promotion be withdrawn with immediate effect.

[Signed]

P.N. MAMBA

CHAIRMAN-CIVIL SERVICE COMMISSION”

at page 33

14. The Applicant has applied to Court for relief on the following items;

- “1. Directing the 4th Respondent to pay to the Applicant his arrears being the difference in his current salary and the salary as per the promotion from the 3rd November 2010 to date forthwith.
2. Directing the Respondents to allow the Applicant to assume the position of Senior Stores Officer with effect from 3rd November 2010 forthwith.
3. Cost of suit at attorney and own client scale.
4. Further and/or alternative relief.”

Page1-2

15 The Commission has the authority to promote certain categories of employees of the Swaziland Government. The Applicant falls in that category. The Constitution provides as follows in Section 187(1),

“Subject to the provisions of this Constitution or any other law, the power of appointment (including acting appointments, secondments, and confirmation of appointments) promotion, transfer, termination of appointment, dismissal and disciplinary control of public officers shall vest in the Civil Service Commission.”

- 16 A promotion of an employee invariably varies the terms and conditions under which he is employed. This variation may affect the salary, responsibility and status of the employee. In order to be implemented, a promotion would necessarily require communication between employer and employee which would amount to an offer and acceptance of the proposed changes in the employment contract. Such communication may be written, oral or by conduct. The employment relationship is based on a contract. The principles of the law of contract will necessarily apply in the case of a variation of the employment contract, especially a variation that has been caused by a promotion.
17. The Applicant states that he was promoted on the 3rd November 2010 to the position of Senior Stores Officer. The Applicant added that he was promoted by letter, annexure MT1. According to the Applicant, annexure MT1 was the official communication directed to him by the employer, informing him that he had been promoted on terms and conditions embodied therein.
18. Annexure MT1 was signed by the Executive Secretary to the Commission, a Mr A.C. Mc Fadden (aforementioned). The Applicant does not say that he received this letter (annexure MT1) from Mr Mc Fadden. Mr Mc Fadden did not therefore communicate the contents of annexure MT1 to the Applicant. Instead, the Applicant avers that he approached Mr McFadden twice in March 2011 to enquire about his promotion. Mr McFadden told the Applicant to exercise some patience on that matter. The Applicant's evidence, reads as follows on this point:

“In particular on or about March 2011 I met the Executive Secretary of the Civil Service Commission Mr. McFadden on two occasions and he said I must be patient with the issue of my promotion.”

(Record page 36)

- 18.1 It is clear from this quotation that when the Applicant met Mr McFadden, the latter was non-committal regarding the alleged promotion. Mr McFadden neither confirmed nor denied knowledge of the alleged promotion. McFadden only asked the Applicant to be patient when the latter broached the subject. The Applicant’s evidence concerning Mr McFadden does not therefore support the Applicants’ contention that he was promoted.
- 18.2 The alleged conversation between the Applicant and Mr McFadden is in any event inadmissible, it is hearsay. It is tendered to prove facts that are not in the Applicant’s personal knowledge but rather in the personal knowledge of Mr McFadden, regarding the alleged promotion of the Applicant. The Applicant was not present in any of the meetings of the commission. The Applicant did not file a supporting affidavit of Mr McFadden to confirm the allegations which are associated with the latter.
19. According to the Applicant he met the chairman of the Commission, Mr Mamba in April 2011. Mr Mamba allegedly confirmed to the Applicant that indeed, he had been promoted. The evidence of the Applicant reads as follows;

“Thereafter on or about April 2011 I met the chairman of the Civil Service Commission Mr. Mamba and he confirmed that indeed I was promoted. Furthermore, he said I must approach the Accountant General.”

(Record page 36)

- 19.1 The Applicant has not filed a supporting affidavit from Mr Mamba to confirm the allegations which the Applicant has made concerning the latter.
- 19.2 If Mr Mamba had filed an affidavit in support of the Applicant, that affidavit would have given the Respondents the basis on which to challenge the evidence of Mr Mamba, where they dispute it, and if necessary call for oral evidence in order to cross examine Mr Mamba.
- 19.3 As will be shown below annexure MT1 did not, on its own, amount to a promotion of the Applicant to the position of Senior Stores Officer. It was a process which had been initiated to promote the Applicant, but was not completed.
- 19.4 The Applicant has no personal knowledge of a decision (if any) that was taken at a meeting of the Commission concerning him. The Applicant has introduced Mr Mamba’s alleged statement in order to prove the truth of its contents. The Applicant’s aim in presenting this particular evidence is to show that he was indeed promoted, because Mr Mamba told him so. That statement is hearsay and therefore inadmissible. The general rule is that hearsay evidence is inadmissible.

19.5 Legal authorities have expressed the principle on hearsay evidence as follows:

19.5.1 *“Oral or written statements made by persons who are not parties and are not called as witnesses are inadmissible to prove the truth of the matters stated...”*

HOFFMAN LH and ZEFFERTT DT: THE SOUTH AFRICAN LAW OF EVIDENCE, 4th edition (Butterworths), 1988 ISBN 0 409 03325 1

(Record at page 124).

19.5.2 The learned authors expounded on the principle as follows,

“The principal modern justification is that hearsay evidence is untrustworthy because it cannot be tested by cross-examination. It is not only that the maker of the statement might have been deliberately lying; he may simply have been mistaken owing to deficiencies in his powers of observation or memory, or he may have narrated the facts in a garbled or misleading manner. The purpose of cross-examination is to expose these deficiencies, and if the maker of the statement is not before Court, this safeguard is lost”

ibid page125

19.6 Even if the Applicant’s evidence concerning Mr Mamba was admissible (which is not the case), still it would not have assisted the Applicant. The Applicant does not say that Mr Mamba offered him a promotion. Alternatively, the Applicant does not say that Mr Mamba communicated to him the contents of annexure MT1.

- 19.7 The Applicant's evidence clearly indicates that he met Mr McFadden and later Mr Mamba individually and informally; they were not sitting as members of the commission.
- 19.8 If the Applicant's evidence was admissible, at best Mr Mamba could be said to have privately conveyed to the Applicant that he (Mr Mamba) is aware that the Commission has taken the initiative to consider the Applicant for promotion. Mr Mamba was not representing the Commission in the alleged private conversation with the Applicant. Mr Mamba's statement did not therefore commit the Commission into promoting the Applicant. Mr Mamba has not confirmed the Applicant's allegations.
20. The Applicant subsequently met the Acting Accountant General Mr D.D. Dube, on a date which the Applicant has not stated. Mr Dube allegedly informed the Applicant that he, together with other officials in the Treasury Department, will have to meet the Commission to discuss the matter. Thereafter Mr Dube would communicate to the Applicant the decision of the Commission, concerning the proposed promotion. The second signatory may sign the letter of promotion, after an agreement has been reached, at that meeting. The evidence of the Applicant reads as follows on this issue;

“By then the Acting Accountant General was Mr D.D. Dube. The Acting Accountant General informed me that as the Treasury they are to meet with the Civil Service Commission and thereafter they were to inform me about my date of assumption as per the promotion.”

(Underlining added)

(Record page 36)

20.1 The Applicant further stated as follows concerning Mr Dube:

“I was shown the letter of appointment by my head of cadre Mr Dube and he said they were to discuss the date of assumption of duty and thereafter to sign the letter and revert to me.”

(Underlining added)

(Record page 37)

20.2 The Applicant has not filed a supporting affidavit from Mr D.D. Dube to confirm the allegations which the Applicant has made concerning Mr Dube. The Applicant has introduced the statement allegedly made by Mr Dube to prove the truth of its contents. The Applicant is therefore saying that; he was promoted because Mr D.D. Dube told him so. That statement is hearsay and therefore inadmissible. The reasons the Court has given for rejecting the evidence of Mr McFadden and that of Mr Mamba, apply in this instance mutatis mutandis.

20.3 Even if the statement allegedly made by Mr Dube to the Applicant was admissible, still it could not have taken the Applicant’s case any further.

20.3.1 Mr D. D. Dube has not been introduced as a member of the Commission. Instead, he has been introduced as Acting Accountant General, a senior officer in the Treasury Department of the Swaziland Government. Accordingly, Mr Dube has no personal knowledge of the decisions taken at the meetings of the Commission. Mr Dube is not the author of annexure MT1. Mr Dube can only rely on what he has been told regarding the alleged promotion.

20.3.2 Mr Dube does not confirm that the Applicant has been promoted. In his statement (as presented by the Applicant), Mr Dube talks about the date of assumption of duty following a promotion. Mr Dube is acting on the assumption that a promotion has indeed taken place as alleged by the Applicant.

It is the Applicant who told Mr Dube that he has been promoted and he requested the assistance of Mr Dube to bring the process to fruition.

20.3.3 Mr Dube is therefore merely stating his understanding of the procedure; that if the Commission has indeed taken a decision to promote the Applicant, then the Commission and the Treasury Department would have to meet in order to discuss and finalise the outstanding issues, especially the date of assumption of duty and the signing of annexure MT1. Once the process of promoting the Applicant is finalised, the letter of promotion (annexure MT1), would then be signed by the representative of the Treasury Department.

20.3.4 Mr Dube's statement also meant that his understanding of procedure is that the date of assumption of duty was important such that it required a meeting of the Commission and the Treasury Department, to discuss and finalise. The delay in finalising the date of assumption of duty would inevitably delay the decision on the proposed promotion. There would be no need for a meeting of these two (2)

Government departments if the date of assumption of duty was a trivial matter.

20.3.5 Mr Dube's statement further meant that the process of promoting the Applicant had not been finalised despite the existence of annexure MT1. According to the Applicant, Mr Dube was in possession of annexure MT1 at the time he allegedly explained to the Applicant the Government procedure and the need for a Government meeting regarding the promotion.

20.3.6 The Court has not been told whether the relevant Government departments eventually met, (as explained by Mr Dube), and if so what was decided regarding the promotion.

20.3.7 The statement which allegedly was made by Mr. Dube would not support the Applicant's contention, even if that statement was admissible as evidence.

20.3.8 According to the Applicant, Mr Dube showed him the letter of promotion (annexure MT1). Assuming that was the case (as Mr Dube did not confirm the Applicant's allegations), this fact confirms that the Applicant did not receive annexure MT1 from Mr Dube.

21. The Applicant stated further that he went to the office of the Commission where he was given the letter of promotion (annexure MT1). The Applicant's evidence reads as follows on this issue;

“With time passing, I then went to the Civil Service Commission to enquire about my promotion and I was given a copy of the letter of my promotion. The issue of promotion depend[s] on management. The letter of promotion was signed by the lawful appointing authority.”

(Record page37)

22. The Applicant has not disclosed the date he alleges he went to the office of the Commission. However it can be deduced, from the immediately preceding quotation that the Applicant alleges to have been given annexure MT1 after his meeting with Mr D.D. Dube. This is the first time the Applicant alleges to have received annexure MT1.
23. The Court has further noted that the Applicant does not disclose the name of the person who allegedly gave him annexure MT1. The Applicant does not state whether or not that person is a member of the Commission and if so, what was his position. The missing information is crucial for the Applicant to link the letter (annexure MT1) with the Commission.

23.1 The Court has difficulty in understanding and accepting the Applicant’s evidence. The Applicant has given names and positions of three gentlemen from whom he enquired about the delay in his promotion, namely: Mr McFadden; the Secretary to the Commission, Mr Mamba; the Chairman to the Commission, and Mr D.D. Dube; the Acting Accountant General. This particular detail indicates that the Applicant is aware of the importance of full disclosure in his affidavit. However when it comes to the person who allegedly gave the Applicant the letter of promotion, his name and position is kept hidden.

The Applicant has not explained to the Court the reason for his failure to disclose the identity and position of the person whom he alleges gave him the letter of promotion (annexure MT1). The Applicant has presented this particular evidence in a rather calculated and strategic manner. The Applicant is not frank and candid with the Court regarding the circumstances under which he received annexure MT1, yet this information is pivotal to the success of his application. It is noted that no witness has confirmed the circumstances under which the Applicant claims to have received the letter of promotion.

23.2 The Applicant's strategy has clearly and purposely prejudiced the Respondents in presenting their defence. The Respondents are unable to investigate;-

23.2.1 whether this anonymous person is real or fictitious,

23.2.2 if he is real, whether or not he works in the Commission,

23.2.3 and the circumstances under which the anonymous person came to be in possession of the letter of promotion (annexure MT1).

23.3 The Applicant has clearly failed (without giving reasons) to disclose material evidence before Court regarding the person who allegedly gave him annexure MT1.

23.4 There is no indication from the Applicant's evidence that the anonymous person (if he is real), gained access to annexure MT1 lawfully, and that he represented the Commission at the time he allegedly gave that letter to the Applicant.

A person, who is in unlawful possession of a letter of promotion, cannot lawfully convey its contents to the Applicant, he has no authority to do so.

24. There is no connection between the Commission and the anonymous person who allegedly gave the Applicant the letter of promotion. The Applicant has failed to prove that he was given the letter of promotion by his employer, or a duly authorised representative. The Government (employer) is not bound by the contents of a document which it did not communicate to its employee. It remains a mystery how the Applicant, alternatively - the anonymous person, came to be in possession of annexure MT1.
25. As aforementioned, a promotion of an employee varies the terms of his contract of employment with the employer. When an employee accepts an offer of promotion, new terms of employment come into existence, which are incorporated into the employment contract. A valid promotion must therefore comply with the requirements of the law of contract, especially where it concerns an offer and acceptance. Inter alia, an offer of promotion must be communicated to the employee by the employer (or their agents), so that the employee may decide either to accept or reject the offer. Communication is an essential element in making or varying a contract, (in this case - a contract of employment).
26. The learned authors have expressed the principle as follows;
- 26.1 *“An offer is a proposal which expresses a person’s willingness to become a party to a contract, according to the terms expressed, and the acceptance of which by another person binds both of them contractually.”*

(Underlining added)

GIBSON JTR: SOUTH AFRICAN MERCANTILE AND
COMPANY LAW, 7th edition,(Juta & Co), 1997

ISBN 0 7021 4058 9 at page 32

26.2 Learned authors have further expounded the principle as follows;

26.2.1 “A person is said to make an offer when he puts forward a proposal with the intention that by its mere acceptance, without more, a contract should be formed. The intention, of course, may be express or implied.”

(Underlining added)

CHRISTIE RH: THE LAW OF CONTRACT, 4th edition
(Butterworths) 2001, ISBN 0 409 01836 8 at page 32.

26.2.2 “The offer must be communicated to the person with whom it is intended that contractual relations should arise”.

GIBSON *ibid* page 33.

27. According to the authorities, it is only the employer and not an intruder, who has the legal capacity to promote an employee. It is the employer only, who has the authority to communicate an offer of promotion to its employee. The Applicant has failed to prove that an offer of promotion was communicated to him, by the employer (or its representative), and that failure is fatal to the Applicant's case.
28. The Respondents have further challenged the letter of promotion (annexure MT1) and labelled it an invalid document.

- 28.1 According to the Respondent, the letter of promotion was designed to be signed by two (2) authorised signatories. The signing of the letter is therefore incomplete, in the absence of the second signatory.
- 28.2 The importance of a signature has been expressed as follows by the authorities;

“The effect of appending a signature is, in general, that the party in question is bound:

‘It is a sound principle of law that a man, when he signs a contract, is taken to be bound by the ordinary meaning and effect of the words which appear over his signature’.”

(Underlining added)

KERR AJ: THE PRINCIPLES OF THE LAW OF CONTRACT. 6th edition, (Butterworths) 2002, ISBN 0 409 03753 2 at page 102

29. It is the signature that gives legal validity to a document; be it an offer or a contract. In the absence of a signature the document remains a draft.

- 29.1 A written document such as annexure MT1, which lacks a co-signature, is not properly executed. The absence of a second signature means that the signing is incomplete. Its contents are therefore not binding, until both signatories append their signatures. The Government has designed a letter of promotion (annexure MT1) that requires two (2) signatories to represent Government. In this case, only one signatory has signed the letter. It cannot be said therefore, that the letter has been properly executed.

That letter remains a draft until it is properly executed. The Applicant's claim fails for lack of a properly signed letter of promotion.

29.2 Annexure MT1 has no date of assumption of duty. That omission, coupled with the absence of the second signature means that the process of promoting the Applicant, though began, had not been finalised. The Applicant's claim for a promotion fails also on this ground. Under normal circumstances, a decision to promote an employee is the prerogative of the employer. The employer is better placed to decide who, among its employees, should be promoted, to which position, when and for what reason. The Court has not been told whether or not the position of Senior Stores Officer is vacant.

29.3 The Applicant does not claim a contractual right to be promoted. His claim for a promotion is based solely on the fact that; some how he came to know of the fact that his employer has initiated, but not completed, a process to promote him. The right to a promotion did not therefore vest in the Applicant.

29.4 The Court has no intention to usurp the function of the employer in deciding when to promote its employee. For the aforementioned reasons, the application fails.

30. The general rule is that costs follow the event. As aforementioned, the Applicant has not been frank with the Court in certain portions of his evidence. This approach was not a mistake but a technique which the Applicant used to avoid disclosing the whole truth in his affidavit. In the circumstances it is fair that the successful party be awarded costs.

31. The application is accordingly dismissed with costs.

The members agreed

D.MAZIBUKO
INDUSTRIAL COURT JUDGE

Applicant's attorney: Ms T. Ndlovu
Attorney General's Chambers

Respondent's Attorney: Mr W. Maseko
Waring Attorneys