



IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 185/2014

In the matter between:

MAJUBUMKHOSI MATHOLA

APPLICANT

and

THE PRINCIPAL SECRETARY,

MINISTRY OF PUBLIC SERVICE

1ST RESPONDENT

ATTORNEYGENERAL

2ND RESPONDENT

Neutral Citation : Majubumkhosi Mathola v The Principal Secretary, Ministry of Public Service & 2 Others [2017] SZIC 45 (09 June 2017)

CORAM: : **M. SIBANDZE ACTING JUDGE**
(Sitting with Ms. D. Nhlengethwa & Mr. P.S. Mamba Nominated & Alternate Members of the Court)

DATE HEARD : **30**

DATE HANDED DOWN : **09 June 2017**

Summary

Civil Litigation - Employee claiming payment of unpaid wages.

Employee continuing to attend work after lapsing of fixed term contracts.

Findings - The Respondent through its Deponent, the Registrar of the Supreme Court does not deny that the Applicant attended work up to the 20th September 2012, and it appears that he did so with her knowledge whilst she tried to secure his contract renewal.

The Applicant is entitled to payment of wages for the period worked, notwithstanding that his written contract of employment had expired.

JUDGMENT

1. The Applicant seeks payment of 28 months' salary from June 2010 to September 2012 in the amount of E 196 000.00.

2. The sailient facts are brief and crisp. Applicant was engaged on fixed term contracts, the commencement date of which is not relevant except to state that he was paid a salary which amounted to E 7 000.00 per month, albeit that it may have been calculated at a daily rate.
3. The Applicant was last paid at the end of May 2010 and states that he worked until the 20th September 2012 when he exited the Public Service, having reached the age of 60 years.
4. Disputes have arisen on the papers with regard to when he was first employed and the reason he stopped attending at his place of work but these disputes are not material.
5. The Deponent to Respondent's Affidavit has not dealt with Applicant's pointed allegation that he was last paid in May 2010 and that he continued to work until September 2012. This will be treated as an admission of these allegations.
6. The Deponent, Ms. Lorraine Hlophe states the following, "***May I state that the reasons for non-payment emanate from the fact that his***

contract had long expired in May 2010 and was not renewed hence there was nothing to support his payment". This is nothing more than an admission that the wages claimed are indeed due to the Applicant.

7. It appears that Public Service bureaucracy simply would not allow the Applicant to be paid due to lack of supporting documents, despite the fact that it is common cause that he worked, clearly even to the knowledge of the Registrar, as indicated in Annexure RA1 to the Replying Affidavit wherein she states the following' ***"Mr. Mathola has been calling for work even after his contract has expired, July 2010 (sic), with the hope that his contract would be renewed. He has left the office on the 20th September 2012"***.

8. The Respondent's Answering Affidavit simply does not disclose a defence and the court wonders why the Attorney General's office would file Notice to Oppose, file an Affidavit and make an appearance to argue the matter with absolutely no defence apparent on the papers.

9. The Applicant has been put to the expense of obtaining the services of an Attorney unnecessarily and this is an appropriate matter where costs would have been granted on the punitive scale, had they been sought on that scale.

10. The court hereby grants the following order;

10.1 That the Swaziland Government pays the Applicant 28 months salary on DP7 amounting to [28 x E 7 000.00} E 196 000.00 being unpaid salary for services rendered from June, 2010 to September, 2012;

10.2 That the Swaziland Government pays the costs of this Application

The Members agree.



MUSA M. SIBANDZE
ACTING JUDGE - INDUSTRIAL COURT

For the Applicant: Mr. S.C. Dlamini (S.C. Dlamini Attorneys)

For the Respondent: Mr. B. Mkhonta (Attorney General's Chambers)