

IN THE INDUSTRIAL COURT

OF ESWATINI

CASE NO. 210/2003

In the matter between:-

ZEBLON MHLANGA

Applicant

AND

**THE PRINCIPAL SECRETARY
MINISTRY OF AGRICULTURE**

1st Respondent

THE ACCOUNTANT GENERAL

2nd Respondent

THE ATTORNEY GENERAL

3rd Respondent

In re:

ZEBLON MHLANGA

Applicant

And

SWAZILAND GOVERNMENT

Respondent

Neutral citation: *Zeblon Mhlanga vs The Principal Secretary & Others*
210/2003 [2018] SZIC 101 (27 September, 2018)

Coram: N.NKONYANE, J
*(Sitting with G. Ndzinisa and D.Mango. Nominated
Members of the Court)*

Heard submissions: 20/09/18

Judgement delivered: 27/09/18

INTERPRETATION OF JUDGEMENT

1. The Applicant was employed by the Government of Eswatini in August 1987 as a Heavy Plant Mechanic and was stationed at Matsapha, Land Development Section. He remained in continuous employment until July 2002 when he was dismissed by the employer.
2. The Applicant did not accept his dismissal and he reported a dispute to the Conciliation, Mediation and Arbitration Commission (“CMAC”) with a view to have the dispute settled amicably between the parties. The parties failed to reach a common ground and the Commission issued a certificate of unresolved dispute.

3. The Applicant thereafter filed an application for determination of the unresolved dispute before this Court in terms of Section 85 (2) of the **Industrial Relations Act No. 1 of 2000** as amended.
4. The Court after hearing the evidence led before it, delivered judgement in favour of the Applicant on 03 December 2010.
5. The Applicant was, however, not paid all the amount awarded by the Court. The Court was told that the Applicant was only paid compensation and that the Principal Secretary was of the view that that amount was inclusive of the terminal benefits. Applicant has now filed the present application, eight years later, and he is seeking interpretation of the judgement.
6. Further, the Applicant's attorney informed the Court that the 1st Respondent told them that he was not clear as to the date on which the terminal benefits should be calculated, that is, whether from the date of employment in 1987 to the date of dismissal in 2002, or from the date of employment in 1987 to the date of the judgement in 2010.
7. The award that the Court issued appears in paragraph 18 of the judgement. The Court stated in that paragraph that;

“.....The Court will therefore make an order that the Respondent pays to the Applicant all his terminal benefits and these to be calculated based on the Applicant’s last salary advice slip. The Respondent is also ordered to pay compensation to the Applicant of an amount equivalent to ten months’ salary. The Respondent is also ordered to pay the costs of suit.”

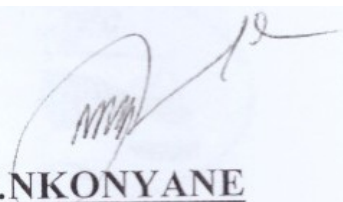
8. The Court was told that the Applicant was only paid the amount for compensation. The Court was told that the Principal Secretary’s interpretation of the judgement was that the terminal benefits were part of the amount paid as compensation for the unfair dismissal.
9. It is not clear to the Court what benefit did the Principal Secretary derive by pretending to be confused by the award of the Court which was framed in clear and unambiguous language. The Principal Secretary had the advantage of free legal advice from the Attorney –General’s Chambers if he was not sure of what to do in order to fully comply with the award of the Court.
10. The award of the Court was clear that the Respondent should pay to the Applicant all his terminal benefits and compensation. The terminal benefits consist of notice pay, additional notice pay and severance

allowance. **The Employment Act No.5 of 1980** as amended is clear that these are calculated based on the period of continuous employment. **(See: Sections 33 and 34 of the Employment Act)**. The Applicant was employed by the Respondent in 1987. He remained in continuous employment from that date until he was dismissed in 2002.

11. Compensation for unfair dismissal is in terms of the **Industrial Relations Act No.1 of 2000** as amended. **(See: Section 16 (1) (c) and (6) of the Act)**.

12. The Applicant's attorney applied for costs as it became clear that the Principal Secretary unnecessarily caused the delay in payment of the Applicant's terminal benefits.¹ The application was not opposed. Order for costs is accordingly entered in favour of the Applicant.

58. The members agree.



N.NKONYANE
JUDGE OF THE INDUSTRIAL COURT OF ESWATINI

For Applicant:

Ms. H. Mkhabela

(Attorney at Mkhabela Attorneys)

For Respondent: Mr. L.S. Dlamini
(Attorney from the Attorney General's
Chambers)