



IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 199/19

In the matter between:

MANDLENKHOSI MAMBA AND OTHERS

Applicants

And

THE KING'S OFFICE

1st Respondent

CMAC

2nd Respondent

Neutral citation: Mandlenkhosi Mamba and Others v The King's Office and Another (199/19) [2020] SZIC 99 (14 August 2020)

Coram: **S. NSIBANDE JP**
(Sitting with N.R. Manana and M.P. Dlamini Nominated Members of the Court)

Date Heard: 11 September 2019

Date Delivered: 14 August 2020

RULING

[1] The Applicants are twenty-one (21) in number and are all former employees of the first Respondent, the King's Office, which is described as an organization duly incorporated in terms of the laws of the Kingdom of Eswatini, with its principal place of business at Lozitha, Lobamba in the Hhohho Region.

[2] The second Respondent is the Conciliation Mediation and Arbitration Commission, established in terms of **Section 62(1) and (2) of the Industrial Relations Act No.1/2000 as amended** (hereinafter referred to as CMAC).

[3] The Applicants state, in their papers, that the first Respondent employed them in the 2011; in different capacities and that their services were summarily terminated in November 2016 without reason. They considered themselves to have been unfairly dismissed and engaged the first Respondent "requesting for payment of their employment benefits as well as compensation for unfair dismissal."

[4] The Applicants state further that they wrote to the Respondent on 6th August 2018 seeking payment of "their benefits and other terminal

benefits within 7 days as it has been long overdue. They further informed Respondent that if their request is not taken into serious consideration legal action would be taken.”

They claimed Notice Pay and 5 year Long Service Pay – Terminal Benefits. It is the Applicant’s further allegation that pursuant to the letter of 6th August 2018 the first Respondent paid various amounts to the Applicants. They do not say how much they received or what the amounts were for. The first Respondent did not indicate what the payments were for save to say that the employees were paid their terminal benefits after their contracts expired.

[5] Further communications between the parties yielded no tangible results. The Applicants then approached the 2nd Respondent to report a dispute against the 1st Respondent. The second Respondent advised that the matter was out of time since a period of eighteen months had elapsed since Applicants were dismissed. The dispute was therefore not conciliated on.

[6] The Applicant has filed an application in Court in which they seek relief as follows:

- “1. Granting Applicants an extension of time to report their dispute against the first Respondent.*
- 2. Costs in the event the application is opposed.*
- 3. Further and/or alternative relief.”*

[7] The application is opposed. In its answering affidavit, the first Respondent denies having terminated the Applicants’ services and avers that; at their contracts of employment came to an end in November 2016. It avers further that the Applicants were paid all their dues. It denies that such payment was as a result of the correspondence between the parties and states that no undertaking to pay any outstanding amount was made.

[8] The first Respondent further avers that it is in agreement with the second Respondent that the Applicants’ claim prescribed eighteen months from their termination date in 2016. It avers that the Applicants’ claim has now prescribed and they are time barred from lodging same.

[9] It is common cause that there is no certificate of unresolved dispute attached to the application because the second Respondent did not

issue one. It simply advised the Applicants that their claims was out of time, a period in excess of eighteen months had elapsed from their date of dismissal.

[10] The second Respondent depended for its advise on **Section 76(2) of the Industrial Relations Act 2000, as amended** to come to the conclusion that the Applicants' claim was out of time or had prescribed. **Section 76(2) reads:**

"2. A dispute may not be reported to the Commission if more than eighteen months has elapsed since the issue giving rise to the dispute arose."

According to the second Respondent on a reading of the said section, the Applicants' claim became prescribed on the expiry of eighteen months from the date of their dismissal since they claim to have been dismissed in November 2016, the claim prescribed in May 2018.

[11] Our Courts have had the opportunity to deal with matters of prescription. It is trite that under the Common Law the two chief causes of interruption of prescription are acknowledgements of

liability by the debtor (recognition) and the institution of legal proceedings against the debtor (See **John Kunene v The Teaching Service Commission and 2 Others SZICA Case No. 2/2006, Volkskas BPK v The Master & Others 1975 (1) SA 69; Tsakatsi v Arbitrator (DDPR) & Another (2009) LSLC 5**).

[12] In *Tsakatsi* (supra) the Court recognised that an internal appeal to challenge the dismissal interrupts prescription as it constitutes the institution of legal proceedings by way of internal appeal.

[13] On the facts of the matter before us, the Applicants state at paragraph 6 of the founding affidavit, that they then engaged the first Respondent about their plight and that “we wrote several letters requesting our employment benefits as well as compensation for unfair dismissal.”

A letter dated 6th August 2018 is attached to the affidavit as proof of the communication with first Respondent. From its content this appears to be the first letter sent to the first Respondent by the Applicants. There is no reference to any previous discussions regarding the claim for Notice Pay and terminal benefits and the

Applicants demand to be paid within 7 days failing which legal action would be taken.

[14] This letter to the first Respondent has been sent to it twenty-months after the alleged dismissal of the Applicants and certainly after the prescription period set by **Section 76(2)** had expired. Quite clearly the claim had prescribed when the Applicants approached the second Respondent in January 2019.

[16] On the papers before Court there is no explanation of the Applicants' inactivity in pursuing their claim between the date of therein-alleged dismissal and the 6th August 2018 when they first communicated with the first Respondent. It can not be said, on the papers that prescription was interrupted. Even the payment made by the first Respondent to the Applicants in November 2018 can not be said to have prescription as the claim was already prescribed. On the papers before us we are unable to have made a proper case for the condonation or the late filing of the dispute. In the circumstances we make the following order:

- (a) The application is dismissed.**
- (b) Each party is to pay its own cost.**

The Members agree.

S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT OF ESWATINI

For the Applicants: Mr. S.C. Mngomezulu (S.C.Mngomezulu & Company)

For 1st Respondent: Mr. N. Fakudze (The King's Office)

For 2nd Respondent: No appearance

