

IN THE INDUSTRIAL COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE

CASE NO. 05/09

In the matter between

KHANGEZILE DLAMINI

APPELLANT

AND

SWAZILAND GOVERNMENT

RESPONDENT

CORAM :

RAMODIBEDIJP

M.C.B. MAPHALALA AJA

HLOPHE AJA

HEARD :

31 AUGUST 2010

DELIVERED:

17 SEPTEMBER 2010

SUMMARY

Labour Law - Claim for an honorarium on top of a salary - Court a quo ruling that it amounts to double benefit - Appellant aggrieved by the decision - Appeal upheld.

JUDGMENT

RAMODIBEDI, JP

[1] The main issue which falls for determination in this appeal is whether the appellant is entitled to payment of both salary and

honorarium at the same time. Crucially, the court *a quo* found as a fact that the appellant was entitled to an honorarium. In my view it was correct in doing so. There is no cross-appeal by the respondent. The court *a quo*, however, erroneously equated a salary with an honorarium. In my view the two are entirely different concepts. In plain terms, an honorarium is not a salary. Having fallen into error in this regard the court *a quo* held that the appellant could not be allowed to benefit twice. It then made the following order:-

"(a) The respondent is to pay the applicant (now appellant) the sum of US \$143,064.58 x E7.00 less the amount of salary that the applicant received during the period that she was the Project Coordinator.

(b) Interest at 9% a tempore morae.

(c) The respondent is to pay the costs of suit."

[2] The facts show that in April 1993, the appellant was employed by the respondent as Assistant Planner in the Ministry of Agriculture and Co-operatives. She was subsequently promoted to the position of Land Planning Officer in 1995.

[3] On 1 October 1997, the appellant was, on her own version, transferred to the Smallholder Agricultural Development Project (S.A.D.P.) as head of its Project Coordinator Unit. The respondent conceded in its reply to appellant's claim that the latter was "appointed" as Project Coordinator of the project in

question. It averred, however, that this was on secondment. In the view that I take of the matter, nothing turns on this slight difference in the two versions. This is so because the respondent conceded that the appellant was indeed "appointed" as Project Coordinator. Quite plainly, she was entitled to payment of a salary as such.

[4] Similarly, the dispute on whether or not the appellant is entitled to both a salary and an honorarium at the same time falls into a narrow compass. In this regard it is instructive to bear in mind what the respondent said in paragraph 5.2 of its reply to appellant's claim, namely:-

"5.2 Respondents state that in principle it is not disputed that an allowance is due, owing and payable to Applicant, however the rate at which the Applicant demands to be paid is contrary to Government Policy and Principles regarding the payment of civil servants on secondment."

In my view the respondent's concession that an allowance is due, owing and payable to the appellant decides the matter. This must clearly be so because there is no dispute on the other hand that the appellant is entitled to payment of an honorarium on top of a salary by virtue of her admitted appointment as Coordinator of the Project.

[5] It requires to be stressed that the motivation for the appellant's entitlement to an honorarium on top of a salary on the other hand lies in the fact that the appellant was admittedly doing additional work. Furthermore, she occupied a high profile

position for which the amount of the honorarium was budgeted for and fixed at the specific amount claimed. Crucially, by letter exhibit "R2" the Principal Secretary of the Ministry of Agriculture wrote to his counterpart in the Ministry of Public Service and Information and said the following, inter alia:-

"To this end, we would appreciate it immensely if you could grant the Ministry of Agriculture and Co-operatives authority to pay the honorarium to the Project Coordinator with effect from 1st October, 1997 when the incumbent PC assumed duty. We confirm that the budget for this purpose is available and has never been used since inception of the project."

[6] The court *a quo's* order deducting the appellant's salary from the sum of US \$143,064.58 x E7.00 further falls to be set aside for another reason. The order in question was not prayed for. As a general rule a party cannot also be granted that which it has not prayed for in the lis. See for example **Commissioner of Correctional Services v Ntsetselelo Hlatshwako Civil Appeal No. 67/09.** Furthermore, the order was not canvassed in the papers by the respective parties. It was simply made by the court *mero motu*. What is worse, the parties were not invited to deal with it.

[7] In the result the following order is made:-

(1) The appeal is upheld with costs.

(2) Paragraph [20] (a) of the court *a quo's* order is

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amended by deleting the words "less the amount of salary
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that the applicant received during the period that she was
the Project Coordinator." The result is that the respondent
shall pay the applicant the sum of US \$143,066.58 x
E7.00.

(3) The court *a quo*'s order in paragraphs [20] (b), namely,
interest at 9% *a tempore morae* and (c), namely, that the
respondent shall pay the costs of suit is confirmed.

M.M. RAMODIBEDI
JUDGE PRESIDENT

I agree

M.C.B. MAPHALALA
ACTING JUSTICE OF APPEAL

I agree

N.J. HLOPHE
ACTING JUSTICE OF APPEAL

For Appellant : Mr. Z. Jele

For Respondent: Mr. V. Kunene