

DEFAULT JUDGMENT



DATE: 30th OCTOBER, 2014

CMAC REF : SWMB 327/14

In the matter between :-

APPLICANT: Name: **THOKO C. MASILELA**

Address: **P. O. BOX 50**

LOBAMBA

AND

RESPONDENT: Name: **MFANAWENKHOSI M. MNDZEBELE**

Address: **P. O. BOX**

MBABANE

1. NATURE OF DISPUTE

The nature of the dispute is: **Unpaid Wages**

2. DISPUTE DETAILS

The parties in this matter were invited to attend a pre-conciliation meeting at CMAC offices in **Mbabane** on the **19th** day of **September 2014**, only one party attended the pre-conciliation meeting and that was: The Applicant. The pre-conciliation was subsequently postponed to the **20th September 2014** at the request of the Respondent, and even on that day, only the Applicant turned up for the pre-conciliation.

Following the failed pre-conciliation meetings, the Respondent was then invited to conciliation to be held on the **7th October 2014**. On this date only the Applicant turned up. It is vital to state that on all these occasions the parties were telephoned and reminded that there was a scheduled conciliation.

There was no reasonable explanation why the Respondent party did not attend the conciliation meeting on the **7th October 2014**, and hence

having satisfied myself that the other party was aware of the conciliation meeting (proof of service in file); the dispute was subsequently referred to arbitration as per Section 81(7) (b) of the Industrial Relations Act, 2000 as amended.

3. EVIDENCE OF PARTY IN ATTENDANCE

The evidence of the party in attendance was as follows:

The Applicant's grievance emanates from a verbal contract of employment entered into in 2011 (Applicant does not remember exact date). The Applicant was employed as a domestic worker for the Respondent and his wife and she earned a monthly salary of E600.00 (six hundred Emalangeneni).

The Respondent's wife used to pay Applicant's salary until she got a transfer from work and moved from the marital home to live somewhere else. This happened in February 2014. When Respondent's wife moved the Respondent requested that Applicant remain behind and continue to work for him, he would pay her salary.

The Applicant further stated that from March 2014 she has not been paid her salary up to the time of the conciliation meeting (October 2014). She tried talking to her employer who kept on promising to pay her but did not come through. The last time they spoke the Respondent verbally assaulted the Applicant and told her that he would not pay her and would not even attend the conciliation meetings that he was being called for.

The Applicant stated that she was never given reasons for the non-payment of her salary.

The Applicant is desirous of being paid the salary due to her from March 2014 to October 2014.

4. ANALYSIS

4.1 **Rycroft and Jordaan** in **A Guide to South African Labour Law 2nd edition at page 35 state** that the essential elements of a

contract of service are: **an agreement by the employee to make his personal services available; an obligation on the employer to remunerate him for his services and subordination of the employee to the control of the employer.**

- 4.2 It suffices to say that in the present contract all the above elements were met by the Applicant and as such it is only prudent for the employer to meet his obligations as per the contract.
- 4.3 **Ebrahim JA in Usuthu Pulp Company Ltd v The President of the Industrial Court and others IC Case 54/09** stated that **“It is the agreement entered into between the parties which provides the answer as to the nature of the relationship between the parties.”**
- 4.4 **John Grogan: Workplace Law, 8th Edition, (2005), Juta & Co Ltd at page 52**, highlights that: the main obligation of employees under the contract of employment is to place their personal service at the disposal of their employer. The tender of service is a prerequisite to the employee’s right to claim payment of wages....”
- 4.5 The parties herein entered into a verbal agreement. The agreement is to the effect that the Applicant would render her services and the Respondent would in turn remunerate her for services rendered. The Applicant stated that she performed her duties as per the contract, at all material times. It is thus unacceptable for the Respondent to renege on the agreement between him and Applicant.
- 4.6 I am thus of the view, that the demand made by the Applicant to be accordingly remunerated as per the contract is not unreasonable. The Applicant rendered her services to the Respondent and as such is entitled to remuneration as per the contract entered into by both parties.
- 4.7 The employer’s conduct of failing to pay the Applicant’s salary amounted to a breach of contract. Applicant continued to render her services but Respondent failed to keep his side of the bargain.
- 4.8 In **Nhlanhla Matse v Mr. Trailer Hire CMAC Case No. 190/2011**, it was stated that “it is unlawful for an employer to fail to pay an employee his/her wages when they become due.
- 4.9 This principle is taken from, **Section 64 (a) of the Employment Act No5 of 1980** which makes it an offence for an employer to fail

to pay wages to an employee, when the wages are due. The Respondent's failure to pay to the Applicant her salary was therefore not only a breach of the verbal contract of employment but also an offence under the Act.

5. OUTCOME DESIRED BY PARTY IN ATTENDANCE

The outcome desired by the party in attendance was to be paid her salary from March 2014 to October 2014. The money claimed being E600.00 x 8 months.

6. DEFAULT JUDGMENT GRANTED

The Applicant was entitled to receive the total amount of E4, 800.00 for the eight months.

The Respondent is thus ordered to pay to the Applicant the said amount of E4, 800.00 (four thousand eight hundred emalangi).

The total amount of E4, 800.00 is to be paid to the Applicant on or before the 30th November, 2014.

THUS DONE AND SIGNED AT.....ON THISDAY OF.....2014.

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**LOBENGUNI MANYATSI
CMAC COMMISSIONER**