



IN THE INDUSTRIAL COURT OF SWAZILAND

JUDGEMENT

CASE NO. 41/2009

In the matter between:-

JABULANI SHOBA

APPLICANT

AND

SWAZILAND GOVERNMENT

RESPONDENT

Neutral citation : *Jabulani Shoba v Swaziland Government*
(41/2009) [2014] SZIC 11 (19 March 2014)

CORAM : **DLAMINI J,**
(Sitting with *D. Nhlengetfwa & P. Mamba*
Nominated Members of the Court)

Last Heard : **24 October 2013**

Delivered : **19 March 2014**

Summary: *Labour law – Unfair Dismissal: Applicant deliberately absenting himself from work for extended periods without adequate and valid reasons. Held: By so absenting himself the Applicant committed a breach of his contract of employment. The act of misconduct by the Applicant was sufficiently grave as to justify the permanent termination of the employment relationship. Held: Even in situations where the Employer is convinced of the guilt of the Employee, it is still obliged to ensure that a fair disciplinary process is observed. Held: Dismissal of the Applicant in casu was procedurally and substantively fair.*

1. Jabulani Shoba, the Applicant in this matter, has approached this Court for relief claiming unfair dismissal against his former employer – the Swaziland Government. His evidence, under oath, was that he was employed by the Respondent, under the Ministry of Agriculture and Co-operatives, as a Cordon Guard on the 01st July 1997. He was initially posted to Mhlumeni Border gate. He further stated that he was at this post for about 7 years. At the time of his dismissal he had been posted to Siphafaneni Veterinary office where he was a cleaner inside and outside the office. He also assisted in the acquisition of stock removal permits. He was dismissed from government service on the 03rd July 2007 for absenteeism, and he is not content with the manner his matter, leading up to the termination of his services, was handled, hence now his claim for unfair dismissal.

2. According to the evidence of the Applicant, before the decision to terminate his services was reached, he was not given an opportunity to be heard. Apparently when he was dismissed he was on leave and as such had not been made aware that a disciplinary hearing was proceeding against him. He testified that he had been once summoned to appear before the Civil Service Commission (CSC) on the 15th February 2007, where the issue of his absenteeism was deliberated on. At this meeting he advised the CSC officials that the reason for his absenteeism had to do with his dire financial

straits in that Government was failing to pay him his monthly salary. A direct consequence of the failure to remunerate him was that his children had been expelled from school. According to him, it was resolved at this meeting that he would be transferred to Siphofaneni to be nearer to his home and health care facility since he is a sickly person. He accepted the transfer with the undertaking that he would henceforth resume his duties at the Siphofaneni Veterinary office. Indeed, according to him, he complied with his end of the bargain and had never absented himself again.

3. Mr. Shoba further stated that when he was dismissed on 03 July 2007, he had been on leave which had started on the day preceding that of his dismissal, the 02nd July 2007. According to him, the letter advising him of the termination of his services stated that he was being dismissed for numerous acts of misconduct which he was unaware of. He was surprised at the contents of the letter since, as far as he was concerned, he was diligently executing his duties and that at the time of his dismissal he was on official leave which had been granted by his supervisor, the Animal Health Inspector at Siphofaneni Phineous Shongwe. He had never received any invitation to any hearing before the CSC.
4. Clarifying on the non-payment of his salary and absenteeism, the Applicant testified that he had absented himself from duty because he was not being

- remunerated. It eventually came to a point where he had to approach this Court to compel the Respondent to pay his salary and he was successful in that his salary payment was reactivated. He was referred to a number of correspondences/memorandum from his line Ministry all complaining about his chronic absenteeism by his representative, Attorney Mr. Lukhele, and he explained that the issue of his absenteeism was resolved at the meeting with the CSC. He now claims; a) reinstatement or alternatively, b) notice pay, c) additional notice pay, d) severance allowance and e) maximum compensation for unfair dismissal.
5. Under cross examination by Attorney Mr. Lunga Dlamini on behalf of the Respondent, Mr. Shoba conceded that he had been summoned on a number of occasions by the Regional Veterinary Officer for Lubombo Dr. Nhlanhla J. Shongwe. It was also put to the Applicant that the reason for the suspension of his salary was to be able to get hold of him since he had disappeared from his workstation, but he disputed this allegation stating instead that whenever he was absent he would hand in a sick-note authorizing his absence. He alleged that the allegations of absenteeism against him were a conspiracy orchestrated by the Regional Veterinary Officer, together with the Principal Secretary and the Civil Service Commission. This conspiracy was in relation to a bribe, in the form of a beast/cow which he was supposed to pay for having been engaged as a

government employee. He also stated that the bribe issue was so serious that his conspirators had even gone to his homestead where they demanded the beast from his wife. Unfortunately though, the wife of Mr. Shoba was never called to testify on this issue in support of her husband.

6. Under further cross examination, the Applicant conceded that one of the conditions for the reactivation of his salary, in terms of the Court Order he obtained against the Respondent, was that the Respondent had to be satisfied with his attendance first. He however denied that he did not stick to his end of the deal. Attorney Dlamini brought it to his attention that he reported for work only between 23 and 30 November 2005 and thereafter he disappeared. This allegation was vehemently denied by the Applicant. Another condition of the Court Order, according to Attorney Dlamini, was that should the Applicant continue to absent himself the Respondent Employer then had the option of instituting disciplinary proceedings against him, which was what the employer had done in the case of the Mr. Jabulani Shoba. Again Mr. Shoba denied having absented himself.

7. The Respondent's representative also put it to the Applicant that he had been summoned to appear before the Civil Service Commission on 28 June 2007, to answer on charges of absenteeism and he requested a postponement to 03 July 2007. Again this was denied by the Applicant. On

03 July 2007, the Applicant is said to have failed to appear before the Civil Service Commission and the Commission proceeded to hear and decide his matter in his absence. The Applicant confirmed that the CSC dealt with his matter in absence. And according to him the reason for his absence was that he was on leave. He reiterated his evidence in-chief that whilst stationed at Siphofaneni he never absented himself. He wondered why he had to be disciplined for his absenteeism transgressions which occurred whilst he still at Mhlumeni. That was the case for the Applicant.

8. Testifying for and on behalf of the Respondent first was David Siza Matimba who introduced himself as an Animal Health Inspector. He testified under oath that between the years 2001 – 2002 he was based at Tikhuba and the Applicant at Mtfumudze. He further stated that their work relationship was not good because the Applicant was absenting himself a lot. Matimba further testified that on a number of occasions he summoned the Applicant to appear before him but was unsuccessful in meeting him as he would not show up. He eventually met him by chance in town at the bus rank. When he questioned him on why he was not honouring his invitations the Applicant apparently stated that he was still to honour same. Not wanting to lose him again, this witness stated that he then ordered Mr. Shoba to come with him to the office of the Senior Health Inspector since it was nearby. But lo and behold, whilst walking to the Senior Health

Inspector's office Mr. Shoba just vanished into thin air. He had stopped to speak to a certain lady and the next thing he boarded a mini bus (kombi) without this witness noticing. When this witness turned around he saw only the lady the Applicant had stopped to speak to and he (Applicant) was nowhere to be seen it was only with the help of the lady that he (Matimba) was able to pull the Applicant from the mini bus he had boarded.

9. When they got to the office of the Senior Health Inspector, the Applicant was asked about his absenteeism and his response was that he had been sick. He however failed to produce any sick notes authorizing his absence, promising to produce them later. When asked why he had boarded the mini bus when walking to the office of the Senior Health Inspector he apparently told the meeting that 'uyagulelwa' (a relative was sickly) and that he was rushing home to attend to that relative.
10. Witness Matimba further testified that, in his capacity as the Applicant's Supervisor in the 2 years he worked with him, he had written a number of letters enquiring about his absence but he (Applicant) had never bothered to respond to these. He revealed also that in these 2 years – 24 months - Mr. Shoba must have reported for duty for a combined period of 2 months only. He revealed as well that he had never received a sick note authorising the

- Applicant's absence and that he personally did not know him to be a sickly person.
11. The second witness to testify in support of the Respondent's case was Dr. Nhlanhla Shongwe. He testified under oath as follows: Between the years 2001 and 2007 he was the Regional Veterinary Officer in the Lubombo Region. In that position he was the head of the region in respect of everything that had to do with animal health. He went on to state that he knew the Applicant, as he was employed by the Swaziland Government as a Cordon Guard. Cordon Guards are principally responsible for manning the boundary fence to prevent and/or curb cross border diseases by livestock i.e. like foot and mouth disease.
 12. Dr. Shongwe went on to state that he knew the Applicant well. Even though he not working with him directly, he had received numerous reports from the Applicant's Supervisors wherein they were complaining about his constant absence from work without authority. These escapades of Shoba's absence would be anything between a week and a whole month. It was then decided that the Applicant be transferred to another station to curb his chronic absence. Indeed he was transferred to Mtfumudze under the Tikhuba station. Even at this new station the absence escapades continued unabated so that the Supervisors again started complaining about Mr.

Shoba's conduct. As head of the department Dr Shongwe then wrote to the Applicant about his absence but no response from him was forthcoming.

13. Correspondence was then directed to Ministry head quarters in which the issue of Mr. Shoba's chronic absence was brought to their attention. Headquarters decided to stop his salary. Upon this drastic measure being taken against him, the Applicant immediately jumped to his feet, so to say. Through his present Attorneys, he reported a dispute with the Conciliation, Mediation and Arbitration Commission (CMAC) whereat it was resolved that when the Applicant returned to work his remuneration should be reactivated. This was in December 2004. Even after the conciliation efforts and resolutions taken at CMAC, the Applicant still failed to show up for work. This witness then wrote a memorandum directed to the Applicant dated June 23 2005 and crafted as follows;

"RE: DEFYING CMAC RESOLUTION OR ORDER.

Following CMAC resolution you were told to resume your duties immediately, but you failed to do so. We have been waiting for you from the 4th of December 2004 up to date, but you failed to comply with the order. I am now giving you a week to respond in writing and show cause why disciplinary action should not be taken against you and a termination of your services.

Should you fail again to report to my office on the 30th June 2005. I will recommend a termination of your services as per the general orders and even CMAC recommended that...” (Sic).

14. Dr. Shongwe also testified that at a certain point he was able to meet the Applicant to discuss his continuous absence. His reasons for not reporting for duty varied from that he was taking care of a sick relative or that he was the one sick. But the sick notes he brought did not correspond with the total number of days he was absent.

15. A decision was then taken to report the matter to the Ministry. This was after the Applicant had apparently decided to report the dispute with CMAC for the payment of his salary for days on which he had produced sick notes authorizing him to be absent on certain days. The Ministry is said to have delayed in paying the Applicant and he then went back to his old habits of absenteeism. He also filed an application before this Court for the payment of his salary. This Court is said to have ordered that he be paid for the days in which he produced sick notes and further that if he continued to absent himself the Ministry should discipline him. It was also an order of this Court that Mr. Shoba be made to sign an attendance register thenceforth when he attended duty.

16. After the Court case, this witness further testified, the Applicant came back to work and the attendance register was also put in place. However, after some days he disappeared again. His absence was immediately reported to the Principal Secretary who then had a preliminary investigation committee set up to specifically investigate Mr. Shoba's matter with a view of deciding whether or not to have him charged for his absenteeism. A letter was written to him informing him of this development and when the Ministry's officials attempted to hand deliver it to the Applicant he refused to accept same. This witness informed the Court that he (witness) tried to advise the Applicant of the importance of this correspondence but he still refused to accept it. The Committee then compiled a report with recommendations to the Principal Secretary who then referred the matter to the Civil Service Commission for action.

17. The CSC then charged the Applicant for absenteeism. At the CSC offices the Ministry's officials were advised to come with Mr. Shoba for him to answer to the charge against him. However this witness informed the Court that Mr. Shoba flatly refused to attend his own hearing. The Court was referred to exhibit document 'SG1' wherein at the last page thereof it is recorded that the Applicant refused to take the letter informing him of his hearing at the CSB (Civil Service Board). It is also recorded therein that the Applicant stated that he would not come to the hearing until his lawyer told

him to do so. This was in the presence of senior officials from the Applicant's Ministry. These senior officials were: the Regional Senior Animal Health Inspector – Bhekisisa Magongo, the Animal Health Inspector – Phineous Shongwe and this witness in his capacity as the Regional Veterinary Officer at the time. At the CSC the disciplinary hearing of the Applicant could not be proceeded with because, as mentioned afore, the Applicant was not present.

18. Dr. Shongwe also advised the Court that he was aware of the circumstances that informed the decision to have the Applicant transferred from Mtfumudze to Siphofaneni. Principally his chronic absenteeism had everything to do with his transfer. His transfer was in February of 2007. By then his case of absenteeism had already been reported to the CSC. Therefore, according to this witness, his transfer cannot be said to have 'closed the chapter' on his numerous instances of absence from duty without authority. At his new work station, his work attendance improved drastically, even though he was later to go back to his old ways.
19. Under cross examination, this witness was asked on the date of the alleged offence in the letter specifying the charge against the Applicant. According to Attorney Lukhele on behalf of the Applicant, the letter from the Principal Secretary was making mention of absence 'on or about 30 November 2005'

and nothing more. This witness concurred with Attorney Lukhele but pointed out that according to the letter the Mr. Shoba had absented himself 'for a period exceeding 3 working days...' Lukhele then referred him to the first page of exhibit document 'SG1' in which it is evident that the Applicant was present on 30 November 2005, his contention being that his client had not been absent for 3 consecutive days and that in actual fact he was present on the day in question. To which this witness agreed. Witness Dr. Shongwe however clarified that the focus should not be on '3 consecutive days' but rather on 'for a period exceeding 3 working days.'

20. The third and final witness for the Respondent was Bhekithemba Dlamini. He introduced himself as the Legal Advisor of the CSC at the time of this matter. He informed the Court that he was aware of Mr. Shoba's matter as he was involved in it. According to him, the CSC received a report from the Ministry of Agriculture on Mr. Shoba's absenteeism. This report had a recommendation that he be disciplined and ultimately dismissed. Procedurally this report has to be accompanied by a departmental preliminary investigation report, a copy of the charges and the accused officer's reply to the charges. In the case of the Applicant all these documents were furnished except for the reply from him. This witness referred the Court to page 18 of the Respondent's bundle, which is an invitation to the Applicant to appear before the Commission on the 12th

April 2007 at 10:00AM for a hearing of his absenteeism matter. Witness Bhekithemba Dlamini informed the Court that the Applicant failed to honour that invitation. Another invitation was sent out, this time for 14 June 2007, again for 10:00AM, but still the Applicant failed to show up. A third invitation was then sent out for 28 June 2007, still at 10:00AM but Mr. Shoba still failed to show up. Yet another invitation was sent out to Mr. Shoba again, a fourth, this time slated for the 03rd of July 2007 and still at 10:00AM. There was still no joy for the CSC in that the Applicant still did not show up. His disciplinary hearing was then proceeded with in his absence and he was subsequently dismissed from the public service with loss of all benefits with effect from 03 July 2007. That was the case for the Respondent.

21. In closing, the Applicant's Counsel reiterated that the dismissal of the Applicant was both procedurally and substantively unfair. According to Attorney Lukhele, the Applicant was not invited to the disciplinary hearing that was conducted by the Civil Service Board, nor was he notified of the misconduct for which he was eventually dismissed. He was not afforded an opportunity to prepare for the charges, be represented and to state his side of the story before the decision to terminate his services was made. Lukhele also submitted that the dismissal of Mr. Jabulani Shoba was unreasonable because he had already been punished for the same offences by the transfer

- to Siphofaneni. He also questioned the decision to terminate the services of the Applicant without taking into account his length of service and personal circumstances. He finally prayed for Mr. Shoba's reinstatement or alternatively that he be paid his terminal benefits with maximum compensation.
22. For and on behalf of the Respondent, Attorney Dlamini stated that the Respondent maintains its stance that the dismissal of the Applicant was reasonable and fair, taking into account the circumstances of the matter. According to him, the Applicant was notified of his misconduct. He went on to state that the Applicant had a history of absenting himself from work as far back as the year 2001. In the year 2003 his salary was even suspended for the absenteeism and it was only after the intervention of this Court that it was reactivated with specific orders that Mr. Shoba should thenceforth report for duty. But should he absent himself for any period of more than three working days, then the employer should initiate disciplinary proceedings
23. Attorney Dlamini further submitted that despite the Order of the Court above, the Applicant still absented himself and that it was on that basis that the disciplinary proceedings were initiated in line with the Order of the Court. All means were made to serve the Applicant and up to 4 (four)

- invitations to attend his disciplinary hearing were sent out but such attempts were futile owing to either his non-availability or when available his refusal to take the invite or instructing his family members not to accept it.
24. In relation to this matter of Mr. Jabulani Shoba, the Court considers it imperative that it at the very outset points out that Employees have a fundamental duty to render services when so required. Indeed wilful absence from work, without authorization or a good reason constitutes a breach of contract and may justify summary termination of the contract. Therefore, Employees accused of being absent without leave or authority must provide a valid reason for such absence. In terms of **section 36 (f) of the Employment Act, 1980**, *'it shall be fair for an employer to terminate the services of an employee...because the has absented himself from work for more than a total of three working days in any period of thirty days without either the permission of the employer or a certificate signed by a medical practitioner certifying that he was unfit for work on those occasions...'* [Court's emphasis].
25. All cases of alleged unfair dismissal are assessed on the basis of two criteria – namely; substantive and procedural fairness. No dismissal will ever be deemed fair if it cannot be proved by the Employer, that it was initiated following fair procedures [procedural fairness] and for a fair reason

[substantive fairness]. The substantive fairness of any dismissal is to be determined on the basis of the reasons on which the Employer relies for instituting the disciplinary hearing against the Employee and ultimately terminating his services. The law requires that the Employer must prove that the Employee committed an act of misconduct so severe as to warrant dismissal. So that if an Employer cannot prove that the probabilities of the employee being guilty are greater than the probability that the Employee is not guilty, the dismissal will be deemed to have been substantively unfair. And before this Court, the case of Mr. Shoba was that his dismissal was procedurally and substantively unfair, which is what the Court will now interrogate.

26. Evidence before this Court is that the Applicant initially took his Employer, the Swaziland Government, to this Court, complaining that he was not receiving his monthly salary under case number **348/2005**. That application by the Applicant was opposed by the Employer which in its papers in opposition averred that the salary of the Applicant had been stopped because he had not been reporting for work and that his whereabouts were unknown. However a consent order was granted after an agreement between the parties to the effect that the Respondent would re-activate the salary of the Applicant with immediate effect and also pay him for days worked. It was also agreed that the Respondent shall apply laid down

procedures to deal with the conduct of the Applicant in the event such conduct was not acceptable to the employer.

27. Apparently the Respondent did not reinstate the salary of the Applicant nor did it pay him for the days worked (27 days) and he (Applicant) approached this Court for relief again. The Respondent justified its non-payment as being that the Applicant had not resumed work. The matter was referred to oral evidence for the Court to determine if the Applicant had indeed resumed work in terms of the consent order. Upon hearing the oral evidence the Court, per Judge President Nderi Nduma (as he then was), made a factual finding that the Applicant had not resumed work so as to entitle him to a salary in terms of the agreement of the parties. The Court nonetheless made orders as follows;

- “1. That the Respondent pays the Applicant the arrear salary of 27 days on or before the 30th November 2005.*
- 2. That the Applicant report to his duty station with effect from Monday the 21st November 2005.*
- 3. That the Respondent maintain a Register of attendance for the Applicant with effect from 21 November 2005.*
- 4. That upon being satisfied of the Applicant’s attendance to his work station, the Respondent re-activate his salary forthwith and in any event not later than 30th November 2005.*
- 5. That necessary disciplinary measures be initiated in the event the Applicant is absent from work for more than 3 working days without lawful reason with effect from 21st November 2005.*

6. The contempt proceedings against the 1st (Swaziland Government) and 2nd Respondents (Accountant General) are hereby dismissed.

28. Following the decision of the Court above, the Respondent indeed maintained a register to monitor the attendance of Mr. Shoba. In relation to the attendance register the evidence before this Court indicates that the Applicant was present on 21 November 2005 but was absent on the very next day 22 November 2005. Then from 23 November to 2 December 2005 he was present. On the 03rd and 04th December he was officially off duty. But between the 05th to the 31st December 2005 he was again absent. Then between the 01st January 2006 to the 14th March 2006 he was still absent from work. Between 15 March and 30 April 2006 he was present. He was again absent between the 01st to the 08th May 2006. In June of 2006 he was only present between the dates 06 to 18 June. In the months of July, August, September and October 2006 he was absent on all his work days except for only 2 days at the end of October 2006 (30th and 31st).
29. In May 2006, the Employer decided that it could not tolerate Mr. Shoba's absence any longer. A Departmental Preliminary Investigation Committee was then established to investigate the alleged misconduct of absenteeism against the Applicant. This Committee worked on Mr. Shoba's matter and compiled a report in July 2006 in which it recommended the termination of

- his services. This in effect meant that Mr. Shoba had to undergo a disciplinary enquiry through the Civil Service Board (now Commission), which was to hear the matter and make a decision on his guilt or innocence.
30. Indeed in November 2006, the Applicant was charged for absenteeism by the then Principal Secretary in the Ministry of Agriculture and Cooperatives N.M. Nkambule. The charge against him was crafted as follows; “...*You Jabulani Shoba are guilty of contravening Section 36 (f) of the Employment Act No.5 of 1980 in that on or about the 30th November 2005, you did unlawfully and intentionally absent yourself from work for a period exceeding 3 working days without any valid reason or lawful excuse, thus contravening the said Act.*” The letter charging the Applicant went on to state that he was given 7 days to show cause in writing why his employment with government should not be terminated. There is no evidence that the Applicant bothered himself to respond to this correspondence.
31. In ***Nkosinathi Ndzimandze & Another V Ubombo Sugar Limited IC No. 476/2005*** Dunseith JP (as he then was) stated that “...*even in situations where management is convinced of the guilt of employees, it is still obliged to ensure that a fair disciplinary process is observed.*” And the evidence before this Court is that the Employer in this case went out of its way to

ensure that Mr. Shoba was informed of the disciplinary hearing against himself. From the evidence before the Court, the Applicant was notified of his hearing through at least 4 (four) correspondences addressed to himself. There is one dated 03 April 2007, then another dated 11 June 2007, and there is yet another dated 20 June 2007. There is also yet another dated 28 June 2007.

32. In fact the employer used all reasonable means available in effecting service of such notification to the Applicant, but he (Mr. Shoba) prevented the Employer from effecting such service. He refused to accept the invitation to the disciplinary enquiry, informing Dr. Shongwe and the other Ministry officials that he would not heed the invitation to his own hearing unless so advised by his Lawyers. The Applicant even went to the extent of instructing his family members not to accept any documents from his Employer. The Respondent therefore cannot be faulted for the refusal by the Applicant to be served with the disciplinary hearing notification. Mr. Shoba in this matter waived his right to attend his own hearing. Even the argument by the Applicant that he was on his vacation leave between the 02nd to the 20th July 2007 cannot stand. This, because his leave had not been approved but only recommended. His Supervisor at Siphofaneni could only recommend such leave, and in fact that is exactly what he did. He never approved the leave and in fact had no such authority. Even if the said leave

had been so approved, the difficulty would still be that all the invitations to the disciplinary hearing were sent out before he even applied for the leave. It is therefore not open to the Applicant to then scream that his dismissal was procedurally unfair. He shot himself in the foot as it were and therefore should not blame anyone but himself for his predicament.

33. The Court also finds nothing wrong with the manner the charge of absenteeism against the Applicant was formulated. The fact that the charge talks of '*...on or about 30th November 2005...*' does not necessarily mean that he was absent on 30 November 2005. Legally, the phrase '*on or about*' is used in reciting the date of an occurrence of an event to escape the necessity of being bound by the statement of the exact date. It is used in order to protect the person making the allegations of fact from being challenged on the accuracy thereof. Procedurally and legally there is nothing wrong with that. It is therefore a finding of this Court that the dismissal of Mr. Jabulani Shoba was procedurally fair. The dismissal of the Applicant in this matter was indeed initiated following a fair procedure.

34. Coming now to the substantive fairness of the dismissal of the Applicant, the question is: was the dismissal of Mr. Jabulani Shoba substantively fair, taking into account the circumstances of the matter? ***Cameron, Cheadle***

and Thompson in: The New Labour Relations Act: The Law After The 1998 Amendments at page 144 – 145 state;

“A fair reason in the context of disciplinary action is an act of misconduct sufficiently grave as to justify the permanent termination of the relationship...Fairness is a broad concept in any context, and especially in the present. It means that the dismissal must be justified according to the requirements of equity when all the relevant features of the case – including the action with which the employee is charged – are considered.”

35. Contractually, Employees are expected to be at their workplace during working hours, unless they have adequate reasons to be absent. Willful absence from work constitutes a breach of contract and justifies even summary termination of the contract. Further to this, the longer the period of absence, the more justified an Employer will be in terminating the contract.
36. Plainly, Mr. Shoba, by deliberately absenting himself from work, committed a breach of his contract of employment. Mr. Shoba was absent from work at periods when he was contractually obliged to render services. And he had no reasonable excuse for such absence. His misconduct was sufficiently grave as to justify the permanent termination of the relationship of employment with his Employer, the Swaziland Government. His

continuous absence from work was an arrogant and mischievous failure to obey his Employer's orders to work. When this Court, per the then Judge President Nderi Nduma, granted its ruling on 15 November 2005, it was effectively giving the Applicant a lifeline. It was in effect saying to him 'mend your ways or face the consequences'. He decided to ignore this stern warning by the Court and went back to his old ways. His defence that the periods of absence complained of were before his transfer to Siphofaneni does not hold water. This, the Court finds, because the Employer started the process which ultimately culminated in his disciplinary enquiry and subsequent dismissal way before the said transfer. The Departmental Preliminary Investigation process for instance, was commissioned in May 2006. He was duly notified of this process and he, in his own wisdom, decided to ignore it. And to argue that the transfer was punishment is absurd at the least.

37. Indeed the Employer in *casu* has established on a balance of probabilities that the ground for the dismissal of Mr. Jabulani Shoba and its adequacy were reasonable and fair in the circumstances. The allegations of absenteeism against Mr. Jabulani Shoba were real. They were not a conspiracy orchestrated against him by the Regional Veterinary Officer, together with the Principal Secretary and the Civil Service Commission as he wanted the Court to believe. Mr. Shoba absented himself from work for

more than a total of three working days in a period of thirty days [between 30 November and 30 December 2005]. And he had previously been warned of the seriousness of his actions and indeed of the possible future consequences but such warnings did nothing to rectify his conduct and behaviour. The finding of this Court therefore is that the dismissal of the Applicant was also substantively fair.

38. In view of the foregoing the Court accordingly makes orders as follows;
- a) **The claims of the Applicant against the Respondent be and are hereby dismissed.**
 - b) **The Court makes no order as to costs.**

The members agree.

T. A. DLAMINI
JUDGE – INDUSTRIAL COURT

DELIVERED IN OPEN COURT ON THIS 19th DAY OF MARCH 2014

For the Applicants : *Attorney A.M. Lukhele (Dunseith Attorneys).*
For the Respondent : *Attorney L. Dlamini (Attorney General's Chambers).*