



## IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIV. CASE NO. 55/95

In the matter between:

MRS QUBILE SIMELANE (BORN SILAWULA)

Plaintiff

and

THE ATTORNEY-GENERAL

1st Respondent

EUROPEAN DEVELOPMENT FUND

2nd Respondent

MICRO PROJECTS PROGRAMME

### JUDGMENT

08/06/95

CORAM : A.F.M. THWALA  
FOR THE PLAINTIFF : MR KHUMALO  
FOR THE DEFENCE : MR. MAGAGULA

### JUDGMENT

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The applicant's service was terminated by the Respondent on the 11th August, 1994. She then made an application to the High Court for an order that:-

- (a) The decision of the 1st and second respondent communicated by a letter dated the 11th August, 1994 terminating her services be reviewed corrected and set aside;
- (b) That the Respondents pay the costs of the application as well as the review.

The first respondent filed a notice in terms of Rule 6 (12) (c) that he intends to raise the following question of law:-

1. Applicant's employment was lawfully and properly terminated in terms of clause 9 of applicant's contract of employment with the respondent annexed hereto and Mark 'A'

Alternatively

2. Applicant's contract of employment with second respondent expired on 1st August, 1992 and was never renewed. Applicant accordingly has no basis for instituting these proceedings.

The respondent relied on the first ground and abandoned the alternative. He argued that the 2nd respondent was not obliged to give the applicant a hearing as he exercised its rights in terms of clause 9 of the contract which states:

"The parties recognise that their mutual right to terminate the said appointment at any time, provided that a month's written notice is given by registered letter".

The respondent argues that the master is not obliged to give a servant a hearing. The Audi alterum partem rule does not apply in cases of master and servant. He relies on the decision GRUNDLING VS BEYERS AND OTHERS 1967 (2) SA 131 where it was said that there is no presumption in a contract of employment that the Audi Alterum Partem is implied. The obligation to afford a hearing to natural justice must either be an expressed or necessarily implied term of the

He did not address the court as to whether the Industrial Relation's Act and Employment Act were applicable in the present case. His argument was based on Common Law.

The applicant argued that she was entitled to be heard. She relied on the provisions of the Employment Act. Her counsel contended that for respondent to enable her discharge the burden of proof required by Section 42 of the Employment Act of 1980. She must have been given a hearing to explain her position. In short she claims that her case does not fall under Common Law because in Swaziland Common Law has been replaced by the Act. Section 3 of the Act prohibits contracts which excludes the Act. The reasons for the termination of the employment of the applicant were given as the mismanagement of funds. She was not charged nor given a hearing to explain the findings of the auditors.

For these reasons, I find that the Audi Alteram Partem Rule cannot be excluded as claim by the respondent. She was unfairly dismissed. The dismissal is set aside.

  
A.F.M. THWALA

JUDGE