



**INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 130/17**

In the matter between:

**ABEL M. SIMELANE**

Applicant

**And**

**SWAZILAND TELEVISION AUTHORITY**

Respondent

**Neutral citation:** Abel M. Simelane vs Swaziland Television Authority (130/17) [2017] SZIC 101 (2017)

**Coram:** MAZIBUKO J,  
(Sitting with A.Nkambule & M.Mtetwa  
Nominated Members of the Court)

**Last Heard:** 21<sup>st</sup> September, 2017

**Delivered** 6<sup>th</sup> October 2017

*Summary: 1) Secondment of a Public Service Officer. Secondment must comply with the requirements as embodied in the Swaziland Government General Orders. A secondment of a Public Service Officer that contravenes the General Orders is invalid, irregular and is liable to be set aside.*

*2) Terms of secondment of a Public Service Officer. Terms of secondment as well as the acceptance of those terms must be in writing.*

*3) Requirement of a contract. For every contract there must be an offer made by one party which has been accepted by the other.*

1. The Respondent is Swaziland Television Authority, a body corporate, with power to sue and be sued, established in terms of The Swaziland Television Authority Act No. 1/1983. The Applicant is Mr Abel Simelane.

2. The Applicant has instituted an application before Court on Notice of Motion, supported by a founding and a replying affidavit for relief as follows:

- “1. Directing the Respondent to forthwith pay to the Applicant the sum of E 765 942.42 in respect of salary arrears from April 2016 to June 2017.*
- 2. That the Court grant costs of suit at attorney and own client scale.*
- 3. Further and /or alternative relief.”*

(Record page 1)

The application is opposed. The Respondent has filed an answering affidavit.

3. According to the Applicant, about the 6<sup>th</sup> April 2016 he was appointed Acting Chief Finance Officer of the Respondent. The appointment was in terms of the Public enterprises (Control and monitoring) Act of 1989.
  - 3.1 The initial appointment was for a period of two (2) months from 6<sup>th</sup> April to 5<sup>th</sup> June 2016. The letter of appointment is attached to the founding affidavit marked A.
  - 3.2 The Applicant was again appointed Acting Chief Finance Officer of the Respondent for three (3) months commencing 6<sup>th</sup>

June and terminating 5<sup>th</sup> September 2016. The second letter of appointment is marked B.

3.3 On the 7<sup>th</sup> September 2016 the Applicant was authorised by the Respondent to hold the position of Acting Chief Finance Officer until further communication. A copy of the written authorization is marked C. The Applicant complied with that authorization.

4. In March 2017 the Applicant received a letter written by the Chairman of the Civil Service Commission (hereinafter referred to as commission) in terms of which the Applicant was purportedly seconded to the Respondent. The letter reads as follows:

*“Date: 23th March, 2017*

*Mr Abel M. Simelane*

*Thro’ Accountant General*

*Treasury Department.*

*Dear Madam,*

*RE: SECONDMENT- YOURSELF.*

*I am directed to inform you as I hereby do, that the Civil Service Commission has approved your secondment as Director – Finance and Administration for the Swaziland Television Authority (STVA) for a period of seventeen (17) months, with effect from 6<sup>th</sup> April, 2016 to 30<sup>th</sup> September 2017.*

*If your secondment is terminated you will revert to your substantive post of Principal Accountant, Grade E2 or to any other equivalent post at the salary you would have received had you not been seconded. You are further advised that your secondment may be terminated by both parties at any time, and that you shall be given one (1) months' notice of termination.*

*You shall continue to be governed by General Orders and other regulations in force or as may be amended from time to time.*

*You are also advised to continue paying your pension contributions to the Public Service Pensions Fund at the salary grade you had before the secondment.*

*Yours faithfully,*

**P.N. MAMBA**

**CHAIRMAN – CIVIL SERVICE COMMISSION.”**

The letter is marked D. According to the Applicant the title, Chief Finance Officer, is synonymous with that of; Director – Finance and Administration at the Respondent’s workplace. Prior to the alleged secondment, the Applicant was employed in the Swaziland Government Public Service.

5. According to the Applicant, the Respondent is a business entity that is owned by Swaziland Government and is also known as a parastatal organisation. All parastatals are governed by a common salary structure which is easily available to employees of both the Swaziland Government and the parastatals. The salary structure is made available through applicable government circulars. The Applicant has referred the Court to circular No. 4/2013 as well as no 3/2016 as the basis on which he calculated his salary arrears.
6. The Applicant averred that he assumed the office of Director – Finance and Administration in the Respondent’s undertaking on the 6<sup>th</sup> April 2016. He added that he has never received payment of a salary from the Respondent but was paid a monthly allowance. The explanation he received from the Respondent was that the allowance paid amounted to

30% (thirty per cent) of the salary he was entitled to be paid by Swaziland Government. The Applicant has challenged the payment of the allowance on the basis that as an employee of the Respondent he was entitled to payment of a salary and not an allowance.

7. According to the Applicant he was entitled to payment from the Respondent of E44, 083.33 (Forty Four Thousand and Eighty Three Emalangi Thirty Three Cent) as monthly salary. The Applicant's computation of his salary is based on his interpretation of a Swaziland Government circular no.4/2013 which is dated 13<sup>th</sup> August 2013 and which is marked G1. Annexure G1 has a salary band for Chief Finance Officers who are employed in parastatals. The parastatals are grouped in various units. The unit in which the Respondent is listed was allocated a salary band ranging between E 440,000-00 to E529, 000-00 (Four Hundred and Forty Thousand to Five Hundred and Twenty Nine Thousand Emalangi) per annum. Using the highest of the said two (2) figures the Applicant calculated his monthly salary by dividing the amount of E529,000-00 (Five Hundred and Twenty Nine Thousand Emalangi) by twelve (12). The Applicant accordingly calculated his monthly salary for the period 6<sup>th</sup> April 2016 to 30<sup>th</sup> November 2016 at

E44, 083.33 (Forty Four Thousand and Eighty Three Emalangeni Thirty Three Cents).

8. The Applicant stated further that on the 17<sup>th</sup> November 2016, the Swaziland Government introduced circular no. 3/2016. The effective date for circular no.3/2016 was 1<sup>st</sup> December 2016 and it has no retrospective effect. The latter circular is marked GN2 and it replaced circular no.4/2013. The latter circular *inter alia* improved the salary structure of the Chief Finance Officers of the Respondent and allied organisations. The new salary ranged from E693, 468-00 to 938, 222-00 (Six Hundred and Ninety Three Thousand Four Hundred and Sixty Eight Emalangeni) to (Nine Hundred and Thirty Eight Thousand Two Hundred and Twenty Two Emalangeni) per annum. The Applicant has determined that his monthly salary due by the Respondent as from the 1<sup>st</sup> December 2016 onward was E57, 789-00 (Fifty Seven Thousand Seven Hundred and Eighty Nine Emalangeni). The Applicant arrived at his figure by dividing the lowest of the said two figures aforementioned (E693, 468-00) by twelve (12).



9. By using aforesaid method the Applicant has determined that his total salary for the period 1<sup>st</sup> May 2016 to 30<sup>th</sup> November 2016 should have been E308,583-31 (Three Hundred and Eight Thousand Five Hundred and Eighty Three Emalangeneni and Thirty One Cents). The Applicant has further determined that for the period 1<sup>st</sup> December 2016 to 30<sup>th</sup> June 2017 his total salary should have been E404,523-00 (Four Hundred and Four Thousand Five Hundred and Twenty Three Emalangeneni). The Applicant has alleged that his method of calculation is based on circular no. 3/2016.
10. The Applicant mentioned that in addition to the amount of money that he has claimed in the Notice of Motion he is also entitled to payment in order to enjoy benefits such as motor vehicle, water, electricity and Communication facility. The Applicant was content with stating that his right to claim payment for these benefits is based on various circulars and that the Respondent is aware of those claims. There is no claim for the said benefits in the Notice of Motion.
11. The Respondent has denied that the Applicant was seconded as alleged or at all. The Respondent has challenged the letter of secondment

which is annexure D to the Notice of Motion. According to the Respondent, the process of seconding a Government employee is governed by the Swaziland General Orders. A purported secondment which is in breach of the General Orders is not enforceable.

12. The General Orders apply to Swaziland Public Service Officers. In the introductory section of the General Orders it is stated who the General Orders apply to:

12.1. *“9 (1) This edition of General Orders contains the conditions of service for officers in the Swaziland Public Service, and shall be read subject to the statutory and common law of Swaziland, and to the terms and conditions as set out in any contract of service between the Government and the officer concerned.”*

(At page XV)

12.2 According to the Respondent, the Applicant was employed by Swaziland Government in the Ministry of Finance as a Principal Accountant. The Applicant has not denied this particular allegation, he is therefore deemed in law- to have admitted it.

The General Orders are accordingly applicable to the Applicant, more especially at the time preceding the alleged secondment.

12.3 In order for the Applicant to access the salary and privileges of a seconded – officer, he must prove that his alleged secondment was in compliance with the General Orders.

13. The General Orders have a laid down procedure to be followed prior to seconding an officer, and the following is required:

13.1 “A178 (1) A Head of Department who has been requested by an approved institution to arrange for the secondment of an officer for duty with the institution, shall, if he agrees with the request, recommend accordingly to the appropriate Commission; the procedure set out in General Orders A.172 suitably modified where required, shall be followed.

(2) If the appropriate Commission authorises the secondment, the procedure set out in General Order A.173, suitably modified where required,

*shall be followed. In this connection it is important that the terms of the agreement governing the period of secondment are fully and precisely laid down, and that the officer whom it is proposed to second accepts such terms in writing;” ...*

(Underlining added)

(At page 77)

13.2 “A177 (2) An officer shall not be seconded for duty with an approved institution unless he has given his consent to such secondment in writing.”

(Underlining added)

(At page 74)

14. Essential components in the secondment of a Public Service Officer to an approved institution, would necessarily include the following:

14.1 There must be a request from an approved institution addressed to a head of department in Government for a

secondment of an officer for duty. In this instance, the approved institution would be the Respondent.

14.2 If the head of department approves the request he/she shall make a recommendation to a relevant Commission to authorise the secondment. In this instance the relevant Commission is the Civil Service Commission.

14.3 If the Commission authorises the secondment, a letter of authority shall be issued conveying the approval.

14.4 The Commission and the approved institution shall also conclude an agreement which shall govern the secondment. That agreement shall fully and precisely lay down the terms of the secondment.

14.5 The officer whom it is proposed should be seconded, shall accept the terms of the agreement in writing. In this instance that officer would be the Applicant.

15. The Respondent has denied the allegation that the Applicant was seconded to work for the Respondent. The attack on the alleged secondment is factually as well as technically based. According to the

Respondent a purported secondment of a Public Service Officer that is in breach of the General Orders is null and void and is consequently unenforceable.

16. The Respondent has stated that it neither requested nor arranged a secondment of a Public Service Officer for duty. The absence of such a request means that the alleged secondment could not have been lawfully initiated. The alleged secondment could only be initiated by a person or entity that is authorised to do so by law. The evidence of the Respondent reads as follows:

*“4.5 ... the Swaziland Government Standing Orders [General Orders]are clear on how secondment of officers must be made. Most importantly, secondments must:*

*4.5.1 Be requested or initiated by the parastatal which requires an employee. In this case, the Respondent never initiated or requested secondment of the Applicant.*

*4.5.2 Secondly, the Civil Service Commission must expressly or formally second that particular officer before the*

*officer can resume his duties on secondment. Again the CSC [Civil Service Commission] did not formally and expressly second the present Applicant. The purported letter of secondment (annexure D to founding affidavit) was only prepared and signed on the 23<sup>rd</sup> March 2017, ex post facto the actual date of commencement of the deployment.”*

(Record pages 44-45)

17. In response to the allegations in the answering affidavit, the Applicant testified as follows in the replying affidavit.

*“3.2 ... My appointment was initiated by the Board Chairperson and the CEO has no authority over me, but the Board. I report to the CEO on dotted lines and not directly.”*

*3.3 My appointment letter and the various extensions are under the signature of the Board Chairperson.”*

(Record page 55)

18. The Applicant has not denied the process that precedes the secondment of a Public Service Officer as stated in the General Orders. The Applicant has failed to adduce evidence to prove that his alleged secondment has complied with the mandatory requirements that precede the secondment of an officer. The Applicant's failure to provide evidence to prove compliance with the General Orders in his alleged secondment, is an admission that there was no compliance. A purported secondment that is in breach of the General Orders is irregular and unenforceable.

18.1 It is noticeable that the Applicant has not denied the procedural and mandatory requirements that precede a secondment of an officer - for duty. These requirements are listed in the General Orders (aforementioned) and repeated by the Respondent in the answering affidavit. The Applicant is deemed by law to have admitted the existence of the aforementioned pre-secondment requirements as well as the fact that they are mandatory.

18.2 A paraphrase of High Court rule 22(3) as read with Industrial Court rule 28(a) provides as follows:



*“22(3) Every allegation of fact in the [answering affidavit] which is not stated in the [replying affidavit] to be denied or to be not admitted, shall be deemed to be admitted, and if any explanation or qualification of any denial is necessary, it shall be stated in the [replying affidavit].”*

(Underlining added)

19. The Respondent’s second point was that there is no agreement which lays down precisely and expressly the terms governing the alleged secondment. The Respondent’s evidence provides that:

*“4.5.3 An officer who has been properly seconded to a parastatal enters into a formal (written) contract of employment with the parastatal in which contract, all terms of [or] conditions of employment on secondment must be clearly set out, including the amount of remuneration to be paid to that officer. The present Applicant has no such contract and I fail to understand the basis of his claim for the monies he claims in his Application.”*

(Record page 45)

20. According to the Applicant, he is an employee of the Respondent who has rendered service to the Respondent, and consequently is entitled to payment of salary. The Applicant has calculated his salary with effect from the 6<sup>th</sup> April 2016 to date at E765, 942-42 (Seven Hundred and Sixty five Thousand Nine Hundred and Forty Two Emalangeneni Forty Two Cents). According to the Applicant, the amount he has claimed is subject to adjustment as a result of certain payments admittedly received by the Applicant from the Swaziland Government.
21. The Applicant has addressed the Respondent's argument as follows in the replying affidavit.

*“4.4 As a consequence of said secondment by the CSC in the letter dated 23<sup>rd</sup> March 2017, I am the substantive Director Finance and Administration of the Respondent and further its fully fledges [sic] and lawful employee and I am thus entitled to be to be remunerated as such.*

*4.5 I reiterate that the Respondent is my substantive employer and I am entitled to my due salary arrears which have accrued to E765, 942.42 computed effective from 06<sup>th</sup> April 2016 to date.*

*From this amount, I have to adjust payment received from the government.”*

(Record page 56)

22. General Orders A178 (1) and (2), and A173 (1) contain certain vital components of a secondment of a Public Service Officer. Failure to comply with the said requirements in the General Orders will render a purported secondment of a Public Service Officer irregular and consequently null and void.
23. According to General Order A178 (2) the secondment of a Public Service Officer must be governed by an agreement whose terms must be fully and precisely laid down. In this context the phrase *‘laid down’* would mean that the terms of the agreement must be documented. This phrase does not necessarily mean that the parties must conclude a written agreement (or contract). According to authority:

*“A written contract is one which is recorded in writing and which bears the signatures of the parties”*

GIBSON JTR: WILLE’S PRINCIPLES OF SOUTH AFRICAN LAW, 6<sup>th</sup> edition, 1970 Juta (ISBN not available) page 313.

24. It is common occurrence for parties to conclude a contract orally but have the terms thereof documented. A common example is where one party writes to the other to confirm the existence of their oral contract and state in that letter the terms agreed upon.
25. The Applicant has clearly failed to produce the terms of the alleged secondment – agreement. The terms of the agreement are an essential component in the alleged secondment. Consequently, the Applicant has failed to prove that what he alleges was actually agreed upon. The absence of the laid down terms, means that the alleged secondment has failed to comply with the General Order A178 (2).
26. Another noticeable fact is that the Applicant has claimed payment of arrear salary but failed to state what salary was agreed upon. As stated in paragraphs 7-9 above, the Applicant has made a unilateral decision regarding salary allegedly due to him for the aforesaid secondment. The Applicant's claim for salary arrears is accordingly based on his calculation of what he believes he is worth, and therefore entitled to, as salary. The Applicant does not allege that an agreement was made regarding his salary as Chief Finance Officer, at the material time. In

the absence of an agreement regarding salary, the alleged secondment is in breach of General Order A178.

27. According to General Order A178 (2) as read with A177 (2) it is mandatory that the proposed Public Service Officer should consent in writing to the terms of the proposed secondment before it is implemented. As aforesaid, the terms of the alleged secondment have not been produced before Court. In the absence of the written terms, there would be no written consent - from the proposed officer. The Applicant has failed to produce before Court his written consent to the terms of the alleged secondment. An officer cannot be seconded in the absence of his written consent to the terms of the secondment. The alleged secondment is further in breach of General Orders A178 (2) as read with A177 (2). The application before Court deserves to be dismissed for failure to comply with the relevant General Orders.

28. The letter which the Applicant introduced to Court in Order to prove his secondment has been reproduced in paragraph 4 above. Annexure D is dated 23<sup>rd</sup> March 2017 but seeks to second the Applicant to work for the Respondent with effect from the 6<sup>th</sup> April 2016. There is no

explanation in the Applicant's papers for this anomaly. Annexure D is an indirect admission by the Applicant that from the 6<sup>th</sup> April 2016 to 22<sup>nd</sup> March 2017 he has been working for the Respondent without an instrument authorising his alleged secondment. As aforesaid, a secondment of an officer without a written instrument stating fully and precisely the terms of the agreement, is in breach of the General Orders and therefore unenforceable.

29. Annexure D presents another problem. This document fails to serve the purpose for which it was intended. The General Orders provide that a secondment of an officer should be based on an agreement, which in this case should involve the Commission, Swaziland Government, the officer concerned and the proposed employer. Annexure D has been submitted inter alia, to prove the terms of the agreement under which the Applicant was seconded. Since annexure D is backdated, it would mean the Commission intended to have the terms contained therein backdated as well, and there lies the problem.

30. An agreement cannot be backdated unilaterally. Also the date of performance of a party in an agreement cannot be altered unilaterally.

There is no evidence that the parties agreed to backdate the alleged secondment to the 6<sup>th</sup> April 2016 or any other date. The Applicant has failed to prove that there was *consensus ad idem* regarding the secondment itself and also its effective date. In the absence of *consensus ad idem* there is no contract (or agreement).

30.1 “Parties to a contract are said to be *ad idem* when there is a *consensus between them on all the terms of such contract.*”

(Underlining added)

CLASSEN CJ: DICTIONARY OF LEGAL WORDS AND PHRASES volume 1, Butterworths, 1975 (SBN 409 01890 2) page 46.

30.2 “In principle, there is no contract if the parties are not *ad idem* as to the material terms of their agreement.”

(Underlining added)

GIBSON: SOUTH AFRICAN MERCANTILE AND COMPANY LAW, 8<sup>th</sup> edition, 2003 Juta, (ISBN 0 7021 5809 7) page 49.

The alleged secondment is null and void since there is no agreement on the terms on which it is predicated.

31. The Respondent has denied that the Applicant was seconded. According to the Respondent the Applicant was engaged by itself as Chief Finance Officer on an acting basis from the 6<sup>th</sup> April 2016 to the 12<sup>th</sup> July 2017. The Applicant was engaged by a series of oral agreements but some of the terms thereof were confirmed in writing.
32. On the 6<sup>th</sup> April 2016 the Respondent appointed the Applicant as Acting Chief Finance Officer, for two (2) months, by letter which is annexure A to the founding affidavit. Annexure A reads thus:

32.1 “RE: APPOINTMENT AS ACTING CHIEF FINANCIAL OFFICER OF THE SWAZILAND TELEVISION AUTHORITY

*I am pleased to inform you that in accordance with Section 8(2) Public Enterprises (Control and Monitoring) Act of 1989, the Board of Directors of Swaziland Television Authority, in consultation with the Minister of Information, Communication and Technology has appointed you to be the Acting Chief Financial Officer of the Swaziland Television Authority.*



*This appointment is with effect from 6<sup>th</sup> April 2016 and for a period of not more than two (2) months. Please accept my best wishes for success and fulfilment as you deliver in this position of leadership in the Authority.*

*Yours faithfully*

*MS NOZIZWE MULELA*

*CHAIRPERSON*

*STVA BOARD”*

(Underlining added)

(Record page 11)

32.2 This appointment is confirmed by the Applicant in his founding affidavit as follows:

“5 *On or about the 06<sup>th</sup> of April 2016, I was appointed as Acting Chief Financial Officer of the Swaziland Television Authority, in terms of Section 8 (2) of the Public Enterprises (Control and Monitoring) Act of 1989. The Appointment was with effect from 06<sup>th</sup> April 2016 for*

*a period of not more than two (2) months (see annexed  
“A” being a copy of the appointment letter).”*

(Underlining added)

(Record page 5)

32.3 The Applicant accepted the acting appointment and rendered service to the Respondent.

33. On the 6<sup>th</sup> June 2016 the Respondent appointed the Applicant for another two (2) months as Acting Chief Finance Officer by letter – annexure B. Annexure B provides as follows:

33.1 *“RE: APPOINTMENT OF ACTING CHIEF FINANCE  
OFFICER OF THE SWAZILAND TELEVISION  
AUTHORITY*

*I am pleased to inform you that in accordance with the  
Public Enterprise (Control and Monitoring) Act, 1989 and  
the Swaziland Television Authority Act, 1983, The Board of  
Directors of STVA have appointed you to be the Acting  
Chief Finance Officer of the Authority.*

*This appointment is with effect from the 06<sup>th</sup> June, 2016 and for a period of not more than three months.*

*Yours faithfully,*

*Nozizwe P. Mulela*

*Chairperson for The Swaziland Television Authority”*

(Underlining added)

(Record page 12)

33.2 This second acting appointment is confirmed by the Applicant in his founding affidavit as follows:

*“6. Further on about the 6<sup>th</sup> of June 2016, I received another letter from the Respondent’s Board of Directors, appointing me as Acting Chief Financial Officer of the Swaziland Television Authority with effect from the 06<sup>th</sup> of June 2016 and for a period of not more than three (3) months (see Annexure “B” being a copy of the said letter).”*

(Underlining added)

(Record page 5)

33.3 The Applicant accepted this appointment as well.

34. On the 7<sup>th</sup> September 2016 the Respondent authorised the Applicant in writing to hold the position of Acting Chief Finance Officer pending instruction from the Respondent's principal. The Respondent's letter is marked C and it reads thus.

34.1 “RE: POSITION OF ACTING CHIEF FINANCE OFFICER

*This serves to inform you that the Board is aware that your term of office as Acting CFO of the Authority expired on 6 September 2016. The Board has since informed the Minister of same with the view of extending the period. We therefore await a response from the Minister, in the meantime, you are expected to hold the said position until further communication.*

*Yours faithfully*

*MS NOZIZWE MULELA  
CHAIRPERSON: BOARD, STVA”*

(Underlining added)

(Record page 13)

34.2 The Applicant has confirmed the terms under which he continued to serve after 6<sup>th</sup> September 2016. The Applicant's evidence provides as follows:

*“7 Further on or about the 07<sup>th</sup> of September 2016, I received a letter advising me that my term as Acting Chief Financial Officer of the Respondent had expired on the 06<sup>th</sup> of September 2016. I was asked to continue to hold the said position until further communication was made to me. Annexed hereto and marked “C” is a copy of the said letter. I therefore obliged and continued holding the position.”*

(Underlining added)

(Record page 5)

34.3 The Applicant accepted the terms that the Respondent had offered.

35. Between the 6<sup>th</sup> April 2016 to the 12<sup>th</sup> July 2017 the Applicant worked for the Respondent, in an acting capacity and not as a seconded officer.

The letter from the Commission (annexure D) did not terminate or vary the agreement which the Applicant had concluded with the Respondent. When the Applicant received annexure D, (on the 23<sup>rd</sup> March 2017), he was at liberty to take lawful means to terminate the acting- agreement he had concluded with the Respondent, and/or make an offer to enter into another agreement with the Respondent based on the terms as proposed in annexure D. The Applicant did not however take that initiative. The agreement in terms of which the Applicant worked for the Respondent in an acting capacity subsisted until it was terminated by Respondent on the 12<sup>th</sup> July 2017. According to the Respondent, the 12<sup>th</sup> July 2017 was the Applicant's last day of work.

36. By letter dated 9<sup>th</sup> June 2017, (annexure I), the Respondent terminated the acting- appointment of the Applicant and gave reason for its decision. Annexure I reads thus:

36.1 "09/06/2017

*The Acting Chief Financial Officer  
C/o Swaziland Television Authority.  
Hospital Hill  
Mbabane.*

*Dear Mr Simelane*

*RE: TERMINATION OF DEPLOYMENT AS ACTING  
CHIEF FINANCIAL OFFICER – YOURSELF*

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- 1. The above matter refers.*
- 2. You are hereby advised that subsequent to the completion of the recruitment process of the substantive Chief Financial Officer, the Board of Directors at the meeting of the Remuneration and Employment Committee (REMCO) held on Thursday, the 08<sup>th</sup> day of June 2017 resolved that your deployment be terminated with effect from Wednesday, the 12<sup>th</sup> day of July 2017.*

*2.1 The effect of the resolution is that as from Monday the 12<sup>th</sup> day of June 2017 to Wednesday the 12<sup>th</sup> day of July 2017, you shall wrap up your responsibilities in the office of the Chief Financial Officer to ensure a smooth and transparent transition to the incoming Chief Financial Officer.*

2.2 *You are thus advised that you shall cease occupying the position and office of the Chief Financial officer, then.*

3. *You are further advised that as a result of the completion of the exercise, you shall revert to render your services with your substantive employer, which is the Ministry of Finance.*
4. *In the interim period, you are required to return any of the authority's assets including documents and equipment to[sic] which you had access to during the period of you deployment.*
5. *The Authority appreciates the services you have rendered whilst on deployment we wish you all the best with your future endeavors.*

*Yours faithfully,*

**BONGANI A. DLAMINI**

**CHIEF EXECUTIVE OFFICER ...”**

(Record pages 38-39)



36.2 The Applicant did not deny that his last day of work at the Respondent's undertaking was the 12<sup>th</sup> July 2017.

37. The contents of the letter from the Commission (annexure D) amounts to an offer by the Applicant to conclude a secondment – agreement with the Respondent on the terms that are stated therein. That offer was however not acceptable to the Respondent. Consequently, there was no agreement between the Applicant and the Respondent on the alleged secondment. There is no secondment of a Public Service Officer without an agreement with the institution that is required to engage him/her. This Court agrees with the principle that was stated by Solomon J, in the matter of WATERMEYER V MURRAY 1911 AD 61, as follows:

*“For every contract consists of an offer made by one party and accepted by the other.”*

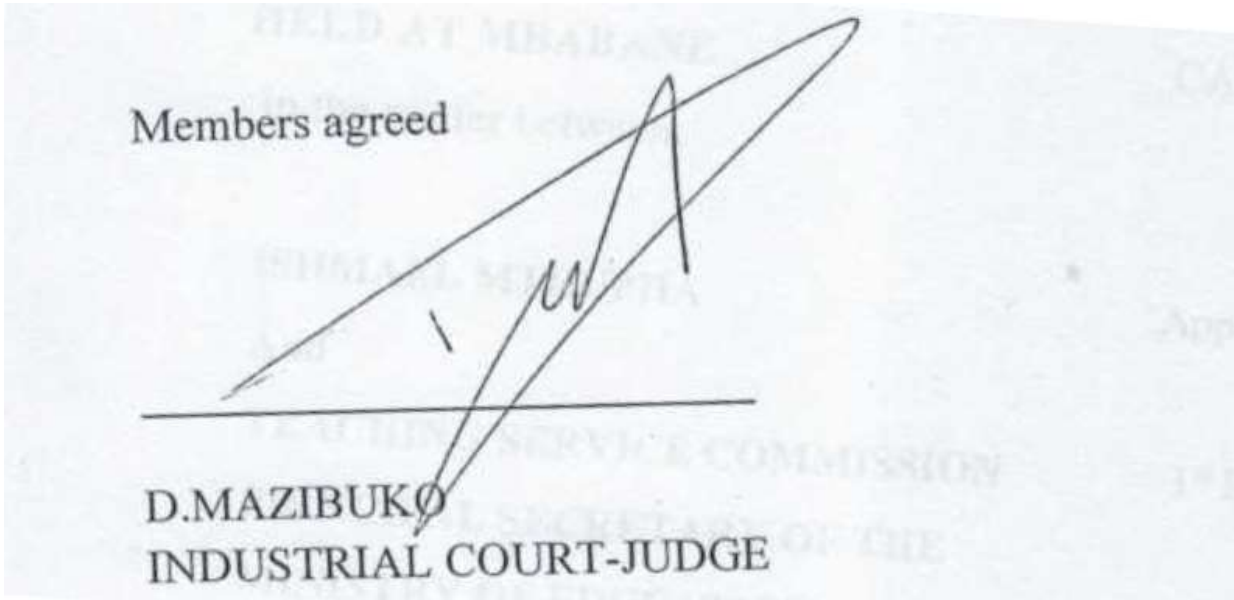
(At page 70)

The application fails for this reason as well. In the exercise of its discretion the Court orders each party to pay its costs.

38. Wherefore the Court orders as follows:

38.1 The application is dismissed.

38.2 Each part is to pay its costs.



Applicant's Attorney

Mr MP. Simelane  
of MP Simelane Attorneys

Respondent's Attorney

Mr S. Simelane  
of Simelane Mtshali Attorneys