



**CONCILIATION, MEDIATION AND ARBITRATION
COMMISSION (CMAC)**

HELD AT MBABANE

SWMB 406/2014

In the matter between:-

NGABISA MBULI

Applicant

And

MR. BAH

Respondent

RULING ON POINTS IN LIMINE

1. BACKGROUND

- 1.1 The Applicant is Ms Ngabisa Mbuli, a former employee of the Respondent. She represented herself during the proceedings.
- 1.2 The Respondent is Mr. Bah, who was duly represented by Mr. Ntsika Fakudze, an attorney at CJ Littler Attorneys.
- 1.3 In the conciliation proceedings that were held on the 22nd of January 2015, at 8:30 am, at the CMAC offices, Asakhe House,

the Respondent raised a *point in limine* on why the conciliation should not proceed.

1.4 The reasons advanced by the Respondents on why the matter should not proceed were *inter alia* that:

1.4.1 The Respondent respects the Commission and what it stands for, but unfortunately because of his stature as a diplomat, he cannot be called to appear before the Commission. The CMAC does not have jurisdiction over him and his affairs.

1.4.2 The Respondent's representative further stated that a person that holds diplomatic status cannot be hauled before a court of law or such similar forums like CMAC. He is protected by his diplomatic status.

1.4.3 The Respondent further alleged that the Applicant knows for a fact that the Respondent is a diplomat; she was informed of it when she started working for him.

1.4.4 A copy of the Respondent's diplomatic identity document was submitted as evidence to prove his status.

1.4.5 In response, the Applicant stated that she was never informed about Mr. Bah's diplomatic status. He only informed her that he was from Guinea and had come to work in Swaziland. All she knows is that he is a

foreign national working in Swaziland. She wasn't even informed what organization he was working for, she found out for herself by looking at the uniform that he wore, as the name of the organization was written on it.

1.4.6 Further to that, Applicant stated that not even one person in Mr. Bah's family highlighted that he was a diplomat. She only heard that he was a diplomat when she tried to serve him with CMAC papers. Even the police could not assist her in serving those papers because of his alleged diplomatic status.

1.4.7 The Applicant wondered how then her name would be exonerated if there is no forum where she can sit down with Mr. Bah and iron out their issues. She submitted that she was hurt because she was accused of theft, an act that she did not commit.

2. It is incumbent upon me at this point to point out that after hearing the submissions of both parties in the matter, I reserved my ruling and postponed the matter to give out a written ruling on the points in limine.

LEGAL ANALYSIS OF RESPONDENT'S POINT IN LIMINE

3. Diplomatic immunity can be defined as a principle of **International Law** that provides foreign diplomats with protection from legal action in the country in which they work. Established in large part by the ***Vienna Convention on Diplomatic Relations (1961)***

(the Conventions), diplomatic immunity is granted to individuals depending on their rank and the amount of immunity they need to carry out their duties without legal harassment. Diplomatic immunity allows foreign representatives to work in host countries without fully understanding all the customs of that country. However, diplomats are still expected to respect and follow the laws and regulations of their host countries; immunity is not a license to commit crimes.

- 3.1 Article 31 of the Conventions gives diplomats immunity from all civil cases except for those that involve "private immovable property."
- 3.2 Any matter that involves the Commission is considered to fall under civil law; therefore it is a civil case. A person proven to be a diplomat is therefore immune from being called to appear before the Commission.
- 3.3 The next step in the enquiry would then have to be whether the Respondent in this matter is indeed a diplomat and by extension has diplomatic immunity.
- 3.4 The Respondent's representative produced Respondent's United Nations Identity Document, which he alleged was proof that he is a Diplomat. Upon examination of the Identity Document, it was noticed that the document is valid and expires on the 20th November 2018.
- 3.5 The Respondent is employed as an Operations Manager at UNICEF. The identity document is *Prima Facie* evidence that the Respondent is a Diplomat and indeed has immunity.

3.6 For the foregoing reasons, the Respondent's point in limine should succeed. The Commission does not have jurisdiction to call the Respondent to appear before it.

4 The dispute reported by the Applicant is hereby rejected

**DATED AT MBABANE ON THIS _____ DAY OF FEBRUARY
2015**

**Lobenguni Manyatsi
CMAC COMMISSIONER**