

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, DECEMBER 2018 (MAIN)

TITLE OF PAPER : EMPLOYMENT LAW

COURSE CODE :LAW309

TIME ALLOWED :THREE (3) HOURS

INSTRUCTIONS :ANSWER ANY FOUR QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION TO DO SO HAS BEEN GRANTED BY THE
INVIGILATOR**

Question one

Duduzile Magagula is a graduate of the University of Swaziland. Magagula Completed her LLB degree in 2007, obtaining a 2:2. Shortly after receiving her results, Magagula created her CV and sent it out to several law firms, in application for employment.

On or about September, 2007 she received a letter from Molapo Attorneys, a Manzini based law firm asking her to come in for an interview. Having successfully gone through the interview process, Magagula was offered a contract of articleship by Molapo Attorneys.

Having worked at this firm for three years, during which time Magagula was able to successfully petition for admission to the Swaziland Bar, she again sat down to work on her CV and started sending it out to several insurance companies, applying for employment. She felt strongly that it was now time to move on and decided she would try the insurance industry first. In her CV, Magagula stated that she had gained extensive experience in dealing with a plethora of legal problems and had sharpened her skills to research legal issues and analyse legal problems. She also claimed to have mastered the legislation dealing with insurance and insurance related issues in the country, as well as competence in drafting legal documents.

Swaziland Royal Insurance Corporation (SRIC) was very impressed with Magagula's application cover letter and CV, and happened to have an opening in its legal department for just the person Magagula described herself to be. They promptly invited her for an interview and shortly thereafter offered her the position of legal officer, reporting to the Director-Legal Affairs. She was to serve three months probation after which she would be confirmed in her employment and given a 10% increase in salary.

Magagula started working for SRIC in December 2010. She was very excited about her new job, and was even more excited about the increase in the salary which was almost ten times the amount she was earning at her previous employment, not to mention other benefits like car and housing allowance, medical aid as well as membership in a lucrative pension scheme. By

the end of the second month she had bought herself a new car and had moved into a nice new flat in Mbabane.

In the middle of the third month of her employment in her new job, Magagula was called into the Director-Legal Affairs' office where she was told that her work was not satisfactory. In fact, the Director said that it appeared to him that Magagula did not do any work at all and appeared to spend all her time chatting on the cellular telephone or on social networking sites on the internet. He let her know that he was having trouble making a recommendation for the confirmation of her contract of employment on those grounds.

Magagula simply sat there and wept, leaving her superior beffudled as to what brought on such a strong reaction from Magagula. He then told her that he would talk to her again the following day, when she was calmer. However, further attempts to talk to Magagula elicited a similar response from her.

A week later, Magagula received a letter informing her that the company had no choice but to terminate her services with immediate effect. Magagula reported a dispute at CMAC which remained unresolved after efforts to resolve it through conciliation. At conciliation, SRIC was represented by an attorney while Magagula represented herself. When Magagula objected to this she was told that the company was only balancing the scales as she was also an attorney.

The matter was referred to the Industrial Court where the Court ruled in favour of Magagula, on the basis that she should have been given a chance to improve herself, and that in any even she should have been given a chance to defend herself at a disciplinary hearing before her services were terminated. The Court also found that it was unfair that at the conciliation hearing, SRIC was allowed representation by their attorney, despite Magagula's objection.

Discuss all the legal issues raised in this question.

(25 Marks)

Question two

The obligations owed by the employer and the employee attempt to strike the right balance between the employer's interests in his business and the employee's right not to be exploited.

Critically evaluate the duties owed by an employer to his employee.

(25 Marks)

Question three

To what extent can incompetence and poor work performance be legitimate grounds for a fair dismissal?

(25 Marks)

Question four

Hlengiwe Fakudze instructs you that she was an employee of Mshiyi Distributors. She instructs you that she works as a sales representative and has done so for the past three years. When she is unwell or needs time off for any reason, Ms. Fakudze requests Mukelo Magagula to attend to her duties on her behalf. Mr. Magagula is paid by Ms. Fakudze. Ms. Fakudze is paid a certain percentage of all sales made by her. She has an office within Mshiyi Distributors and is provided with stationery. She attends weekly staff meetings and is required to report to the Sales Manager on sales made at these weekly meetings. The company does not deduct either medical aid, pension fund or tax from her salary.

The reason she has come to you is that she has received a letter from the company saying that her services are no longer required by the company and she wants to institute proceedings against the company for unfair dismissal.

Advise you client on her chances for success.

(25 Marks)

Question Five

You have been asked by the senior attorney at the law firm at which you are interning to write a brief on the sources of employment law in ESwatini.

(25 Marks)