

**A STUDY OF FACTORS CONTRIBUTING TO LABOUR LITIGATION  
AGAINST THE SWAZILAND GOVERNMENT**

**A MINI-THESIS SUBMITTED IN PARTIAL FULFILMENT  
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## DECLARATION

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Name of Student

Signature

Date

## **DEDICATION**

I dedicate this thesis to my greatest inspiration, my family, whose love, support and teachings laid the foundation for my aspiration and zeal to further my studies, and to do the required research.

## ACKNOWLEDGEMENTS

A project, like a study, cannot be done without the support of all the people close to you, and of those who are committed to supplying the knowledge that is required. The research became a reality through the support of many individuals, to whom I would like to extend my most sincere gratitude and appreciation.

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## **ABSTRACT**

The Swaziland Government is experiencing employee litigation resulting in financial and staff time costs. The study found that several underlying factors contribute to labour litigation against the Swaziland Government, including the poor qualifications of managers. The Swaziland Government is a public organisation with an objective of providing public goods and services, of which service delivery is the most crucial indicator for the successful implementation of public policy. The policy is implemented by qualified officers, working under enabling procedures and regulations. Organisational procedures are designed to establish organisational justice, predictability and order. Deliberate or erroneous disregard of procedure results in the perception of organisational injustice, driving employees to litigate. Effective administrators conduct business within the law, and in terms of ethical behaviour. Some managers and administrators acquire their positions not on merit, but due to political connection, which presents as discrimination, resulting in employee litigations. Due to procedural and legal barriers, the Government is not able to deal with litigation cases as quickly and effectively as can the private sector. By means of qualitative analysis, the study found that, to avoid employee litigation, the Swaziland Government should establish administration and management recruitment and promotion policies that are based on equity principles, enforce current procedures and regulation of the human resource function to reduce the amount of litigation, and design effective orientation and induction training to inculcate new set of attitudes and values among the public administrators and managers to ensure professional conduct of their duties, in a manner that does not lead to employee litigation. The findings of the study are important for the development of guidelines for the public administrators and managers in dealing with human resources issues. The designing of training

content for the administration and management cadre is critical in mitigating incidences of employee litigation, with it eventually coming to save the Government from financial wastage.

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

ADB	African Development Bank
CMAC	Conciliation, Mediation and Arbitration Commission
DRC	Democratic Republic of Congo
EEOC	Equal Opportunity Employment Commission
ILO	International Labour Organization
IMF	International Monetary Fund
IR	industrial relations
MCC	Millennium Challenge Corporation
NDS	National Development Strategy
SACU	Southern African Customs Union
SADC	Southern African Development Community
SDI	Swaziland Development Index

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## CHAPTER ONE

### STUDY ORIENTATION

#### 1.1 Background of the study

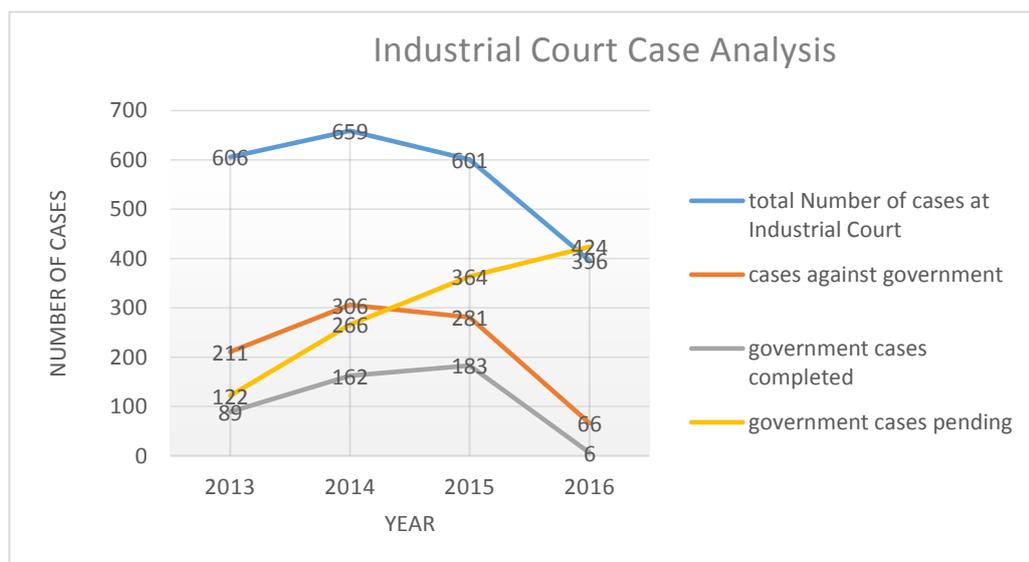
An organisation is not a business firm but a political party, governmental institution, university, hospital, labour exchange or any other public institution or professional union, whose objective is to provide services or goods (Černiauskiene, 2014). The aim for public organisation is to produce products and solve social problems (McBain & Smith, 2010). The Swaziland Government is a public organisation with the objective of providing services to its citizenry and partners.

Public and private organisations differ in terms of environmental and transactional factors and internal processes, the environmental factors include the influence of the political level and constraints put on public organisations by legal mandates and market forces of key actors and funders which expect public organisations to collaborate to achieve social aims (Nutt & Backoff, 1992; (Gumedze, 2014) McBain & Smith, 2010). The strategy of public organisations should be compatible with political priorities, in the case of Swaziland, it should be linked to its National Development Strategy (NDS) (Economic Planning and Development, 2012).

The Swaziland Government Programme of Action (2013 – 2018) has within it, the Swaziland Development Index (SDI), a monitoring tool, defined government service delivery, governance and corruption as part of the focus areas for assessing the country's overall status of progress towards its vision 2022 which states that by the year 2022 the Kingdom of Swaziland will be in the top 10 % of the human

development group of countries founded on sustainable development, social justice and political stability. The vision's main objective is to improve the standard of living for its citizenry through access of quality services, wealth creation and employment (Economic Planning and Development, 2012). Many government employees are taking the Government to court for a variety of issues and the Government is losing most of the cases in court (Gumede, 2017).

Rosenthal (2016) states that, legal disputes between employers and employees can be highly charged, intensely personal, often embarrassingly public and can be very difficult to resolve, hence, can be costly, time-consuming, and damaging to employee relations. Rosenthal (2016) further hold the view that, the number of employment-related litigation filings has globally been steadily increasing over the last decade, and employers are facing greater challenges and financial exposure from both current and former employees than ever before. Figure 1 below, illuminates the industrial court case analysis against the Swaziland Government between the years 2013 and 2016.



**Figure 2: Swaziland Industrial Court Cases 2013 – 2016, data sourced from court record.**

The number of actual new cases is declining but because yearly the number of pending cases is accumulative, the number of cases against government pending or unfinished in the industrial court rises each year is increasing. The industrial court is a tribunal non-departmental public body with statutory powers. The Swaziland industrial court and the industrial court of appeal are specialist tribunals whose jurisdiction is confined to labour disputes (Auditor, 2016).

The Swaziland Government spends resources such as finances and man hours on resolution of labour litigations and pay a huge pay-out due to losing the employee litigation cases at Conciliation, Mediation and Arbitration Commission (CMAC) and in the Industrial Court and High Court. Concern over this issue has been raised by the public, the legislature and cabinet (Auditor, 2016). The negative effects of time delays in the resolution of disputes are very high. The private sector is able to cope with this phenomenon better than the public sector (Gumedze, 2014).

In the prevailing dire financial era for most of the governments especially the Swaziland Government, the resources used in engaging in labour litigation could be used for more pressing government initiatives that would benefit the citizenry of Swaziland (Auditor, 2016).

In Swaziland, human resource (HR) officers, legal officers and the administration have been given induction, capacity building training through training and development to enable them to advise accordingly and to manage effectively and efficiently (Public Service, 2016). Yet, litigation cases are not easing up as expected. The key question

then becomes what are the underlying factors that contribute to labour litigations against the Swaziland Government and why does it take so long to resolve labour cases compared to the private sector where they are resolved quicker? In an attempt to answer this question, there is a need to investigate and determine the factors contributing to labour litigations by collecting empirical evidence on such factors and contribute to literature, or lay the basis for further research, and to develop a framework for the management of labour litigations.

## **1.2 Clarification of terms and concepts**

The following terms and concepts which are used in this study are explained below:

Labour litigations - sometimes referred to as employment litigations or lawsuits.

Litigation as is the process of taking legal action or an action brought in court to enforce a particular right. Employment litigation is a lawsuit in which an employee sues an employer or an employer is sued because of an employment-related issue.

Swaziland Government- include all departments, ministries, or branches of the government that are integral parts of the structure, and are accountable to and report directly to the central authority — the legislature, cabinet, or executive head(Prime Minister).

Civil service employees - often called civil servants or public service employees, includes all employees who work in a variety of fields such as teaching, health care, management, and administration for the government.

Public Service employee means a person employed in ongoing, term, temporary, casual or other employment, or on secondment, in the public sector.

### **1.3 Statement of the problem**

The Swaziland public, legislature, and cabinet has raised concerns over the conduct of government employees and the increase in labour litigations against government while there is very poor service delivery from government employees (Auditor, 2016). Concerns have been raised about the negative effects of time delays in the resolution of disputes. This study will investigate the underlying factors that contribute to labour litigations against the Swaziland Government and why it takes so long to resolve labour cases while in the private sector they are resolved quicker.

### **1.4 Objectives of the study**

The overall aim of this study is to explore the underlying factors that contribute to labour litigations against the Swaziland Government. The specific objectives were to:

- a) explore the factors contributing to labour litigations against the government of Swaziland;
- b) Examine management practices that lead to labour litigations.

### **1.5 Significance of the study**

Research on litigation has in general focused on discrimination, inappropriate sanctions and not much has been done in the context of Swaziland especially on factors contributing to labour litigation in Swaziland. The study will look at the contributing factors to labour litigation from an empirical perspective so that we can develop a framework that would assist in the management of labour litigations and further support the government development agenda as encapsulated by the National Development Strategy. This study will be useful in the context of Swaziland where

there has been limited or no empirical research done on factors contributing to labour litigation and will contribute to literature, and generate data for future research.

### **1.6 Limitations**

Judges are political appointees therefore cannot be interviewed under the current dispensation, hence only their recorded judgements are going to be used for the study in conjunction with court of appeals records and judgments. A further limitation is that the records at the Industrial Court are manual and information about each case is fragmented and kept in various log books, hence each case will be traced from inception through the various stages until the issuance of a judgement. There is lack of prior research specifically in factors contributing to labour litigations against the Swaziland Government, hence the study is exploratory

### **1.7 Delimitations**

The study is limited to officers designated as HR managers, legal officers and head of departments. In the management strata, it shall be limited to senior managers. These are the officers who deal with HR management issues and who may be cited in the breach of agreements or application of procedures and policies. According to the Auditor General's reports for 2013/14, 2014/15, and 2015/16 there are management practices that constitute breach of procedures and policies resulting in labour litigations against the Government of Swaziland. Hence the focus of the study is limited to court cases for the period 2013 – 2016 which are available to the public.

## **1.8 Thesis Structure**

The main body of this research consists of five (5) chapters, starting with the introductory chapter herein referred to as Chapter one (1), which is a detailed background to the research problem and provided a general overview of labour litigation with focus on Swaziland, specifically the Swaziland Government. The chapter highlights the backdrop of the labour litigation, being service delivery, the Swaziland Government Programme of Action for the year 2013 to 2018, the National Development Strategy. The chapter further entails the nature and scope of the research and the objectives that were the basis for the study. Lastly the chapter highlighted the importance of the research.

Chapter two (2) is the literature review. It entails a clarification of terms associated with litigation such as employee relations, labour relations, and employee litigation includes related literature and studies. The chapter examines existing literature on studies done on litigation Swaziland, the Southern African Development Countries (SADC) and other countries outside of the SADC region, further discussing related content such as the governance in relation to litigation. The sources of employee litigation are also discussed in this chapter.

Chapter three (3) presents the research objectives, research design and methodology adopted for the research, outlining the processes and procedures that were followed in conducting the study. This being a qualitative research, the chapter includes the description of the instruments used and the approach used for data analysis.

The fourth chapter is a critical examination of the data collected and entails presentation of the data collected, analysis of the research findings and interviews in relation to the literature reviewed and theory in general.

The fifth and final chapter provides a summary of the conclusions made in relation to addressing the research objectives and examines whether the research objectives were met. The chapter further proposes several recommendations based on the findings.

### **1.9 Chapter Conclusion**

The evolution of the workforce from illiterate nonunionised force to a literate and unionised workforce requires a quick accompanying change in management attitudes, understanding and competencies in order to be able to promptly address all issues that may result in labour litigation.

## **CHAPTER 2**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

This chapter describes the literature on the concept employee or employment litigation. It defines the concept and traces the development of the concept over time. It then lists and describe the causes of litigation and recommends the actions that need to be taken to avoid the likelihood off its occurrence in the public sector. The chapter further highlights the global trends of employee litigation and comments on international labour conventions, the international structural mechanism that help in preventing employee litigation. It also presents the management practices, such as focusing on the role of education in the workplace.

#### **2.2 Employee or Employment Litigation**

Employment litigation is a grievance arising at the workplace, where an employee feels that he/she has been treated unfairly or his/her right has been violated by the employer (Law Dictionary, 2013). It is when an employee sues an employer or an employer is sued due to an employment related issue. Litigation may be due to discrepancy in salaries, discrimination or harassment. Barrera (2017:158) states in the California Business Issues that Labour and employment litigation is a growing threat to employers that continues to rise each year. In the United States in 2013 labour and employment disputes was one of the top three types of litigation facing organisations. Koziel and Rosenberg (2014) presented that most employee litigation are lost by the employer in Nuisance-Value Settlement. A Nuisance-Value Settlement is paying off

the proponent of a meritless claim rather than incurring the greater expense of litigating. Goodman (2016) employee litigation can have class application, whereby the settlement covers all the employees. In order to reduce the possibility of high costs organisation settle quickly, which is referred to as blackmail settlements

### **2.3 Labour Relations and Employee Relations**

Labour relations is the management of the social contract, Birkbeck (2012) citing Rousseau (1995) define the psychological contract as individual beliefs, shaped by the organisation, regarding terms of an exchange between individuals and their organisation. Simply put, what the employee expects the organisation to do and give in exchange of labour services.

Labour Relations refers to the direct relationship between the organisation and its employees and the relationship between the organisation and the union(s) that either represents the employees or who could potentially represent employees (Secord & Mackintosh, 2012). The labour relations environment has a direct and very real impact on the performance of the organisation. The quality of the direct relationship with employees will impact service delivery, product quality, productivity, operational flexibility and the overall competitive advantage of the organisation (Secord & Mackintosh, 2012). Employers hope to manage employee relations successfully with each respective individual, as a means to raise morale and productivity. (Nikoloski, Dimitrova, Koleva, & Kacarski, 2014).

Employee Relations refers to the direct relationship between an organisation and its employees (Secord & Mackintosh, 2012). Employee relations can be considered to be

a study of relations between employees as well as employer and employees so as to find ways of resolving conflicts and to help in improving productivity of the organisation by increasing motivation and morale of the workers, (Nikoloski, Dimitrova, Koleva, & Kacarski, 2014). Nikoloski (at al 2014) asserts that it is concerned with providing information to employees regarding the goals of the organisation so that they have a better understanding of the aims and policies of the management, Employees are also informed about their poor performances and ways and means to correct performance.

According to Edwards (2003), the employment relationship is by definition a relationship between an employee and an employer, concerned with organising HR in the light of the productive aims of the firm but also the aims of employees. It is more interested in policy within the enterprise and not the dynamic interplay between the state, employers, unions and employees.

Employment relations are based on greater cooperation between management and employee, being motivated to add value to the organisation, and such employment relationships are considered as being based on management practices based on trust, fairness, knowledge and understanding of employee aspirations and attention to 'employee voice' obtained through a variety of channels (Nikoloski, Dimitrova, Koleva & Kacarski, 2014).

No employment relationship occurs in a vacuum and it is important to realise that there is a range of contexts within which it occurs and which, to varying degrees, impinge upon the relationship. One of these is the legal context, and at the level of the individual

there is a legally enforceable contract between employee and employer. It has also been suggested that the employment relationship can be perceived as a psychological contract. (Leat, 2014)

The employer and employee may negotiate on a range of issues, some of which might include but is not limited to: benefits; date when employment is to commence; compliance with HR policies, such as equal employment opportunity policies; hours of work; standards of performance; termination procedures; overtime; pay; and probationary periods.

The ground for litigation arises when the psychological contract is broken down. According to Birkbeck (2012) critical to the psychological contract are the presents of fair HR policies and practices and just culture in the organisation.

## **2.4 Labour disputes**

The HR department has a function to prevent, reduce and deal with organisational conflict and disputes. Conflict in the Workplace is a fact of life. In Jones & George (2003) it is stated that conflict is associated to the central processes of people and their association with the surroundings and is, therefore, an unavoidable part of organisational life. When there is a dispute in an organisation the normal organisational activities are disrupted to the extent that it becomes difficult to achieve the organisational goals and objectives (More & Wegener, 1992).

Workplace disputes need to be handled well. If not, it can damage the organisation's employees' physical, emotional, and mental wellbeing escalating into unmanageable

heights. It can further harm the mission and goals of an organisation (Caudron, 1998). Resulting employee litigation can have devastating financial consequences. Since unresolved workplace conflicts sometimes led to litigation with its attendant problems and the willingness of employees to sue their employer have exposed almost all employers to an increasing volume of litigation related to work-place conduct or the HR decisions made on daily basis (Bertain et al., 2014)

An individual dispute arises from a disagreement between an individual worker and his or her employer over an aspect of their employment relationship. An individual dispute may be initiated by a worker complaining to vindicate what he or she believes to be a right, or reacting to employer-imposed disciplinary action or dismissal. (Trebilcock). Managers faced with operational constraints may want to remove poor performing employees while HR advocates for the protection of the employees and the legal department advocates for the avoidance of all legal risks (Strebler, 2004).

Most available literature on labour litigation relates to disputes emanating from breach of contracts or interpretation of agreements and policies governing the relations between the employer and employees (Colvin, 2011). According to the Australian Bureau of Statistics labour disputes can be categorised as follows:

1. Disputes relating to negotiation of awards and collective/enterprise agreements which will include disputes about: remuneration, which includes matters such as wages, allowances, entitlements and superannuation; employment conditions, such as working hours, leave, benefits, and other general employment conditions; other

agreement related matters, such as job security and other causes relating to the process of enterprise bargaining negotiation.

2. Disputes relating to outside awards and collective/enterprise agreements. These issues include disputes about: health and safety that relate to physical working conditions, including safety matters, and workers' compensation provisions, protective clothing and equipment, and employee amenities; job security issues, such as retrenchment of employees, downsizing, restructuring, use of contractors, and outsourcing; managerial policy issues, such as discrimination, Award restructuring, terms and conditions of employment, promotion, discipline, personal disagreements and changing work practices; union issues dealing with matters that relate to employer approaches to the union, inter-union and intra-union disputes (demarcation disputes), sympathy stoppages in support of employees in another industry, and recognition of union activities; other non-agreement related matters, including political or social protests.

Even though an employment relationship involves both employer and employee, for the purposes of this study only the employer perspective is being analysed. Fear of litigation occupies the mind of HR and others in organisations. A number of different approaches are available to resolve industrial disputes when they arise. The successful resolution of conflict will often depend on the styles and skills of managers, particularly HR managers the HR manager and other managers increasingly have to negotiate with their employees.

An employer, for legal purposes: exercises control over employees, has responsibility for payment of wages; holds the power to dismiss employees. An employee is a worker under an employer's control. Control may involve: • the location of the workplace; the way in which the work is performed; the degree of supervision involved. These criteria are critical in determining legal disputes over the employment contract.

In literature analysed relating to labour litigation, various authors such as (Colvin, 2011) (Global, 2016) (Latreille & Saundry, 2016) (Lender & Polkes, 2016) have written generally about the types of labour litigations with a view to develop dispute avoidance and resolution strategies. There is little or no research on the underlying factors contributing to labour litigations. There is research specific to certain types of labour litigations (discrimination, breach of contracts), and specific to certain few countries such as United Kingdom, Australia, China and India, specifically certain regions, counties or cities. However, in the context of Swaziland limited research exists with regards to labour litigation in generally and specifically to the factors contributing labour litigations.

Employees today are, on average, more highly educated than in the past. They demand more challenging, interesting work, greater involvement in decision making processes and autonomy at their workplace (Hardy, Howe, & Cooney, 2013). The increasing practice of negotiating employment agreements at the workplace level means that employees will be more closely engaged in the process of developing new or changed agreements. Lack of compliance with labour laws is exacerbated by the low levels of legal literacy among most workers in the region (Fenwick, Kalula, & Landau, 2007)

The state influences the employment relationship directly through laws on wages (e.g. minimum wages), working conditions (e.g. on hours of work) and many other issues and through its role as the employer of public sector workers. (Edwards, 2003). ILO (International Labour Organization) has assisted most countries in Southern Africa, for instance Botswana, Lesotho, Malawi, Namibia, South Africa and Swaziland to develop labour legislation that is consistent with international standards. (Fenwick, Kalula & Landau, 2007) Swaziland is signatory to many international instruments. Although the country is quick to ratify, implementation is often slow or never materialises (Dube & Magagula, 2007).

SADC (Southern African Development Community) member states such as Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Malawi, Madagascar, Mauritius, Mozambique, Namibia, South Africa, Swaziland, the United Republic of Tanzania, Zambia and Zimbabwe, have different levels of development and rates of economic growth, they share similar historical legacies of colonial rule and they all have labour law systems that have been 'borrowed' from the West (Fenwick, Kalula, & Landau, 2007).

The capacity of labour laws to protect and empower workers is also inhibited by reliance within labour legislation on the conventional employment relationship as a mechanism through which rights and duties are conferred (Fenwick, Kalula, & Landau, 2007). For the employer, delay may also be detrimental in producing ongoing disruption to its operations and attendant uncertainty about the status of personnel policies and practices that are implicated in the claim, (Colvin, 2011). An individual's

ability to win a claim may often depend on his or her access to procedures that are fair, affordable and rapid and whether he or she has the support of a trade union or an able labour inspectorate (Trebilcock).

## **2.5 The Justice System in Swaziland**

Labour relations takes place in a judicial context, the Swaziland judicial context is unique, since it is dual that is traditional and modern law. Labour cases are dealt with on none traditional courts, but in some instances the traditional law is included. To note is the case of dismissal of public workers for participating in the wire strike of 2013, where the workers appealed to the King, who then used his traditional authority to reinstate them.

The legal system has a Western-style court system in which the Industrial Court hears industrial relations matters (Olsen, 2014), to which Dube and Magagula (2007) concurs. At the apex of the Swaziland justice system is the Supreme Court, which is the final court of appeal on all matters. It has a supervisory and review jurisdiction over all the courts of Swaziland. The High Court is second after the Supreme Court, and it is vested with powers to handle matters with a constitutional bearing. It also has unlimited original jurisdiction in civil and criminal matters. Parallel to the High Court are the Industrial Court and Industrial Court of Appeal, which are specialist courts dealing exclusively with industrial and labour matters (Dube & Magagula, 2007). In many countries, labour courts (called in some countries “industrial courts”) or specialised tribunals will deal with rights disputes. The principal reason for having

such specialised judicial bodies is the need for speedy, inexpensive and informal procedures and specialised capacity in labour matters (Trebilcock).

In a number of the jurisdictions (such as South Africa, Lesotho, Malawi and Swaziland) there is a concept of ‘unfair labour practice’ and a forum to which resort may be had to remedy such a practice. Many of the labour law systems in the SADC region are organised around the principle of tripartism, as promoted by the ILO (Fenwick & Kalula, 2005). A number of countries, notably Botswana, Lesotho, South Africa and Swaziland now have labour dispute resolution systems that give a significant role to the social partners (Fenwick, Kalula, & Landau, 2007). According to Dube and Magagula (2007) Swaziland also has specialist courts set up to deal with particular matters with limited jurisdiction as set out in the legislation establishing them. The Industrial Court and Swazi National Courts are examples of specialist courts in Swaziland. Swaziland does not, however have small claims courts. This has the effect of denying the indigent aggrieved person the opportunity to access justice, especially since Swaziland does not have a legal aid system.

Although labour courts in countries such as Botswana, Swaziland and Zambia have attempted to develop key principles, they have had only limited success. In the other Southern African countries, however, the courts have limited themselves – or have been limited by legislation – to dispute-resolution functions, and to matters relating to the contract of employment. Some courts have also proven reluctant to apply international human rights law, even where it is open for them to do so. Lack of compliance with labour laws is exacerbated by the low levels of legal literacy among

most workers in the region (Fenwick, Kalula, & Landau, 2007). Amendment of laws usually poses challenges for the information seeker as the Government is slow to publish comprehensive updated versions of amended laws. Amendments cannot be found in one comprehensive document. It is still scattered and can be found in other legal instruments, such as the Government Gazettes. This impedes access to information (Dube & Magagula, 2007).

The judiciary in Swaziland is facing a number of challenges in recent years, mainly from the Government's refusal to obey court orders, resulting in the en masse resignation of judges of the former Court of Appeal. Tenure of office was also a challenge, as at the beginning of 2007 only two judges of the High Court occupied office after their compatriots' one-year contracts were not renewed (Dube & Magagula, 2007).

Employee litigation is very costly to the Government, this also true to other organisations Doyle and Kleiner (2002). Kaufman (2010), analysed certain areas of such litigation, focusing specifically on workplace conflicts involving managerial issues. Posthuma, Folres, Dworkin and Pavel (2016) examined employment lawsuits across case type and alternative dispute resolution methods (negotiated settlements versus trials and arbitrations). Keller, (2005) in (Lewin & Kaufman), provides an empirical analysis of the development of and perspectives on industrial relations (IR) in Germany and encourages scholars to develop a broader, more integrative definition of all aspects of the employment relationship.

Lipsky, Avgar and Lamare proposes a model that seeks to provide a new approach to understanding how workplace dispute resolution functions in the era of individual employment rights connect the structure of rights that are enacted to the patterns of employment practices in the workplace that effect on the employers' patterns of practices in the workplace and ultimately determining the nature and character of the employment relationship. Latreille and Saundry (2016) attempts to develop a more integrated and strategic approach to managing conflict within a large state-owned provider of healthcare in the United Kingdom.

## **2.5 Governance**

Swaziland has been reported to abuse basic human rights by harassment of labour leaders and restriction of workers' rights. In general, perpetrators act with impunity, and the Government takes few or no steps to prosecute or punish officials who committed abuses. (Olsen, 2014) The inequality of resources is peculiar to aggrieved or wronged indigent poor in the workplace. In most cases, they do not have the means to hire legal practitioner to assist them take their complaint or grievance against the employers to court (Cummings et al. 2006).

According to the Investment Climate Statement (2014), Swaziland is continuing to recover from the 2012 fiscal crisis that began in 2010 after a sharp decline in revenue from the Southern African Customs Union (SACU), on which more than fifty percent of the Government budget depends. In 2012 the International Monetary Fund (IMF) had suspended its engagement with Swaziland because of the Government's lack of commitment to reform the public sector and reduce the cost of public sector wages. The African Development Bank (ADB) also suspended its budgetary assistance

(Olsen, 2014), and this resulted in Swaziland amending the Industrial Relations Act of 2000 in 2014 through the Industrial Relations (Amendment) Act 2014 also referred to as Act 11 of 2014 by inserting a new section concerning the registration of employer and worker federations (new sections 32bis, 32ter and 32quut) as well as amending provisions concerning resolution of protest action and civil and criminal liability of trade unions in sections 40 and 97 of the Act. (ILO, 2017). Swaziland's poor human rights and labour rights record has jeopardised its access to export markets and to donor support. In 2014, Swaziland risked losing its duty-free access to the U.S. market under the African Growth and Opportunity Act (AGOA) due to continued infringements on internationally recognised workers' rights. Swaziland also remains ineligible for Millennium Challenge Corporation (MCC) support due to its poor rankings on political and civil liberties by international non-governmental organisations (Olsen, 2014). This is in concurrence with the views held by Dube and Magagula (2007) that Swaziland is signatory to many international instruments although the country is quick to ratify, the implementation is often slow or never materialises.

In Woodhams' (2007) research, he notes that the case studies and focus group research suggested that both employers and employees believed that the system favoured the other party. Many employers feared that a judgement of inadequate processes would expose them to large liabilities, while employees feared that presumed superior resources would give the employer an advantage.

## **2.7 Sources of employee litigation**

The various causes of employee litigation fall into one of three different categories, being the organisational injustice, contract-based and procedural categories.

### **2.7.1 Organisational injustice**

Organisational justice is defined in Baldwin (2006:2) as the perceptions that employees have about the fairness of workplace procedures, interactions and outcomes. Such perceptions influence attitudes and behaviour for good or ill, with them impacting on whether the related performance is positive or negative. Cropanzano (2007:45) says that Academy of Management is the employees' sense of the moral propriety of the way in which they are treated. It is the 'glue' that allows people to work together effectively. Justice defines the very essence of individuals' relationships with their employers. In contrast, *injustice* is like a corrosive solvent that can dissolve bonds within the community. Injustice is hurtful to individuals and harmful to organisations. The presence of injustice can result in litigation.

Organisational justice includes the absence of discrimination, the existence of fair procedures, and the ethical behaviour of administrators and managers. March-Fell (2013) observes that, although there have many advances made to improve equality within workplaces, systemic discrimination is still much practised, at times even without the employer's knowledge. Further, organisational injustice is found embedded within policies, procedural practices and organisational cultures.

Discrimination, as a subset of organisational justice, has the highest number of employee litigation cases. Lunn (2011) defines workplace discrimination as consisting of a form of employer discrimination that is based on race, gender, religion, national origin, physical or mental disability, age, sexual orientation and gender identity.

Harassment, specifically which is sexual by nature, also occurs as part of organisational injustice. The U.S. Equal Opportunity Employment Commission (EEOC) defines workplace sexual harassment as consisting of unwelcome sexual advances, or of conduct of a sexual nature that unreasonably interferes with the performance of a person's job, or which creates an intimidating, hostile, or offensive work environment. Paludi et al. (1991) define sexual harassment as bullying or coercion of a sexual nature, or the unwelcome, or inappropriate, promise of rewards in exchange for sexual favours. The Convention on the Elimination of All Forms of Discrimination against Women notes that sexual harassment is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including in terms of recruitment or promotion, or when it creates a hostile working environment.

The court records show that, in a specific instance, a woman alleged that a manager sexually harassed her when she was working for a club over a period of several years. The allegations included touching her breasts, leering at her, and making comments of a sexual nature about her body. She stated she had complained to management several times, but that the complaints had been ignored. The plaintiff also alleged that, as a woman, she had been denied promotions offered to less experienced males at the club. As a result, she resigned. The matter was resolved by conciliation with the employer, on the manager's paying \$15000 to the complainant

### **2.7.2 Contract-based litigation**

Employee litigation is due to disputes arising from employee–employer contracts. An employment contract is defined as a contract that is issued to an employee, setting out the rights and responsibilities of the employee and their employer concerned. The purpose of an employment contract is to ensure that both the employee and the employer have a clear understanding of what is expected during the term of employment involved. In *Betten* (1995), Lord Diplock stated that the purpose of an employment contract is that parties should perform their primary obligations voluntarily.

According to Norton and Green (2005:195), an employment contract conforms to the covenant of good faith and fair dealing, implying that both parties promise not to deprive the other of any benefit that is rightly due to them. If a party acts in bad faith, even if the contract has not been technically broken, the action is still regarded as a breach of contract. Commenting on the case *Burtler v Grant* (1996), Leech (2003) said that the covenant of good faith and fair dealing is available in those cases where there is no technical fault, but one party to the employment contract has failed to act in an appropriate manner, leading to the depriving of the other party of a contractual benefit. Perrit (2006:5-6) explains that the common law contract doctrine permits dismissed employees to recover damages if the employer(s) concerned have violated their commitment to discharge, only for cause, or only after following certain procedures. Further, breach of contract claims based on formal written agreements have long been a staple of employment litigation.

Employment contract variation is often a source of dispute that can lead to employee litigation. Job variation without the consent of the employee is viewed as a breach of the employment contract concerned. According to Lockton (2005:166), constructive dismissal occurs when the employer's conduct is such that it indicates a significant breach of contract, if the conduct involved indicates that the employer is no longer intending to abide by the contract. The above was found in the *Western Excavating (EEC) Ltd v Sharp (1978)* case, in terms of which the judge concluded that the resignation of the employee was not a form of constructive dismissal.

According to Emir (2016:109), any job change without the employee's consent must be qualified by a term in the contract that shows that the variation was is within the scope of the contract. In the court case *Dreadner Kleinwort Ltd and Commerzbank AG v Attrill & Ors*, the court concluded that a variation, which needs to be certain, can only be done with the consent of all parties. An employee may not be dismissed for refusing to obey an order that is not within the scope of the employment contract, if the order is reasonable. The above determination was made in the judgement, *Ferrant v Woodroff School*.

## **2.8 Procedural causes of employee litigation**

Organisations have HR procedures and policies that govern the relationship between the employer and the employee. The purpose of such procedures is to ensure consistency and fairness in labour-related dealings. Bingham (2016:148) comments that, in modern times, an employer perceives abiding by the principles of consistency and fairness as being a means of gaining, and improving, the degree of employee

commitment, and, hence, productivity. Employers tend to view inconsistency and unfairness as demotivating employees and increasing staff turnover.

According to Wilton (2016), the grievance and disciplinary procedures should meet the requirements of the Employment Act and of the Industrial Relations Act for them to avoid employee litigation. Policies and procedures minimise the likelihood of costly litigation (Taloo, 2007:476).

The failure to follow procedure in terms of dismissing a staff member can result in litigation. The law requires that a disciplinary committee should be chaired by an independent chairperson. Freedland's (2016:173) study shows that there is a disconnect between the employment law and organisation procedures, with the procedures involved showing no legal influence of substantive norms of fairness, reasonableness, and equality. Workplace procedures are dependent on the goodwill of management in terms of establishing and administering them in good faith (Estreicher & Sherwyn, 2004:611).

Warnock and Baker (2017:494) state that unfair dismissal occurs when specific statutory procedures are not followed. Conformity with procedures assists in resolving cases in the workplace, rather than through litigation.

## **2.9 Chapter conclusion**

Employee litigation is a phenomenon whereby an employee sues their current, or former, employers for perceived, or experienced, violation of an employment contract, or the law. The causes for the litigation are caused by the decision-making of management, or by the way in which it has treated an employee(s). The breach of contract is the major cause of litigation. Numerous court decisions have enriched the legal principles and doctrine in employment law. Studies have shown that court decisions and the law do not affect the workplace policies and procedures concerned, thus establishing litigation risk for organisations. The violation of the covenant of good faith and fair dealing establishes a reason for litigation that is independent of the technical breach of the employment contract involved. To mitigate the likelihood of litigation for organisation, procedures that are based on the law have embedded within them the principles of fairness and equality.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 Introduction**

A research methodology is a mode that is used to solve a research problem systematically, with it involving all the various steps that are adopted by the researcher in studying the research problem concerned (Rajasekar, Philominathan & Chinnathambi, 2013). The current study focused on factors contributing to labour litigations against the Swaziland Government. Accordingly, the present chapter discusses the detailed systematic processes and procedures that were followed in carrying out the study. It provides a detailed research methodology for the study, by means of explaining the research design of the study, and by describing the survey population, as well as the methods and tools of data collection. Details of the sample size of the study are included. The chapter further clearly discusses the sampling procedures followed, the methods of data analysis, and the limitations of the study.

#### **3.2 Research objectives**

The objectives of the study were to:

- explore the factors contributing to labour litigation against the Swaziland Government; and
- examine the management practices leading to labour litigation.

### **3.3 Study site**

The current research focuses only on the employers' perspective on labour litigation. With the centralisation of the administration of all government ministries and departments in the Kingdom of Swaziland, the head offices of the country all came to be located in Mbabane, the capital city. Hence, there were no physical barriers to locating a suitable site for the conducting of the present study. From the yearly published Swaziland Government establishment register, which lists all the government ministries and departments, together with the corresponding established positions, it was easy to extrapolate the information regarding: the number of ministries and departments; the total number of positions for the designation of interest, so as to demarcate the prospective participants ('the population') and the centres and locations involved. The site for the study was Mbabane, the capital city of the Kingdom of Swaziland, where the headquarters for all 22 Government ministries and departments were located.

### **3.4 Research design**

The research design, which is concerned with the social aspects of the world, seeks to answer questions regarding why people behave in the way that they do, how opinions and attitudes are formed, how people are affected by the events that go on around them, and how and why cultures and practices have developed in the way that they have (Littman, 2006). Creswell (2012) defines a research design as an outline of what the researcher will do in a study, from recording the hypothesis and its operational implications, to the analysis of the collected data. As Kumar (2011) points out, there are three main typologies of research design: qualitative; quantitative; and mixed

method. For the purposes of the current study, the qualitative research method was adopted.

The qualitative research design, according to Gibbs (2007), is the collection, the analysis and the interpretation of data by means of observing what people do and say. More emphatically, the definition of qualitative research proposed by Creswell (2012) portrays a qualitative research design as being an approach in terms of which the inquirer often asserts that qualitative research concerns analysing the multiple meanings of individual experiences, with the intent of developing a theory, a pattern, or advocacy perspectives. The current study explored the participants' experiences in relation to labour litigation against the Swaziland Government in terms of the following: (a) the factors contributing to labour litigation against the Swaziland Government; (b) how such factors contribute to labour litigation against the Swaziland Government; and (c) what management practices contribute to labour litigation against the Swaziland Government. Qualitative research is concerned with developing explanations of social phenomena (Patton, 2010). That is to say, such research aims to help researchers understand the social world in which people live, and why things are the way they are (Gail, Borg & Gail, 2007).

Qualitative research, which is based upon the philosophy of empiricism, follows an unstructured, flexible and open approach to enquiry, aims to describe more than measure, exhibits an in-depth understanding of the subject, uses small samples, and explores perceptions and feelings, rather than facts and figures (Kumar, 2011). In the present study, the researcher explored the participants' perceptions and lived

experiences (Sikweyiya & Jewke, 2012), of labour litigation against the Swaziland Government. It did so by soliciting the views of the participants based on their knowledge of, and involvement in, cases of labour litigation against the Swaziland Government. For the current study, the approach taken by qualitative research was found to be relatively useful for the generation of data, because very little research has been done so far in the context of Swaziland. Hence, the study, in part, should have generated secondary data for use in future research within the same study context.

In this study two research methods were used one being the focus group interview and the other in in-depth interview. Dilshad (2013) noted that focus Group Interview is a qualitative technique for data collection. In Anderson (1990, p.241) Focus Group is describes as a group comprised of individuals with certain characteristics who focus discussions on a given issue or topic”. Denscombe(2007, p.115) concludes that a focus group, is a small group of people between six and nine in number, who are brought together by a trained moderator (the researcher) to explore attitudes and perceptions, feelings and ideas about a topic”.

### **3.5 Population and sampling**

Hennings (2009) describes a research population as being a well-defined collection of all individuals, or objects, within a certain population that usually share a common trait. Kumar (2011) states that sampling is the process of selecting a few respondents (who are known as ‘the sample’) from a bigger group of people (i.e. the sampling population), so as to serve as the basis for estimating the prevalence of a particular phenomenon among them.

For the current study, purposive sampling was used to obtain the required sample. The technique of purposeful sampling is widely used in qualitative research for the identification and selection of information-rich cases, for the most effective use of limited resources (Patton, 2010). The above involves identifying and selecting individuals, or groups of individuals, who are especially knowledgeable about, or experienced with, a phenomenon of interest (Creswell & Plano Clark, 2011). In undertaking the present study, the researcher chose to interview individuals whose working careers would have been associated with more than one ministry or department that contributed towards the in-depth experience of working for the Swaziland Government.

The selection criteria were based on each ministry's or department's potential to add to the understanding of the factors contributing to labour litigation against the Swaziland Government. The ministries and departments were categorised in two ways, with the first being based on their size, and on the number of cases of labour litigation involved. The participants were also selected based on their role in the relationship between the employees and the employer (i.e. the Swaziland Government) concerned.

The participants involved were directly responsible for the HR management encompassing labour disputes against the Swaziland Government. On consultation with the controlling officers concerned, only those who were involved with disciplinary issues, ranging from internal disciplinary issues to labour disputes lodged with the courts of the Kingdom of Swaziland, were selected to participate in the study and to take part in the interviews. The 'purposeful selection' was based on the fact that the selected officers had experience with, and knowledge of, specific information

regarding the disputes; they had participated in making the arguments concerned; and they had knowledge of the verdicts reached, and the basis for them, which provided 'rich information'. Purposive sampling is extremely useful for constructing a historical reality, describing a phenomenon, or developing something about which only a little is known (Kumar, 2011).

The study population was comprised of 20 participants in total who participated in two sets of focus group interviews.. Nine of the participants were in a general management posts, five were from the legal departments while six from the human resource department. There were 65% female participants in the focus group interviews.

### **3.6 Research instruments and data collection**

The current study used semi-structured questionnaires for the focus group question guidelines for the focus group interviews, the focus group question guidelines is the also referred as the interview schedule. In a semi-structured interview (being the data collection method involved), the researcher asks a predetermined set of questions, using the same wording and order of questions as was specified in the interview schedule. An interview schedule is a research tool for data collection which comprises a written list of questions, either open-ended or closed, which are prepared for use by an interviewer in terms of a person-to-person interaction (which might be face-to-face, telephonic, or by means of other electronic media). As the present study was qualitative in nature, open-ended questions were used. The main advantage of the semi-structured interview is that it provides uniform information, which assures the comparability of data, while allowing probing questions to be asked to obtain in-depth

information (Kumar, 2011). The open-ended questions allowed the respondents to choose how they replied in relation to the questions asked.

The scope of the study was exploratory, with the intention of finding out facts and explanations; hence the interview was used for primary data collection. Primary data are referred to as the data that are collected by the researcher, who then becomes the first user of such data for a particular investigation (Silverman, 2010). To enrich the data, heads of departments, HR officers and legal officers working for the Swaziland Government were interviewed to obtain the group focus. The researcher asked questions, to which the participants responded with the intent of making the interview conversational. “The purpose of interviewing is to find out what is in and on someone else’s mind. We interview people to find out from them those things we cannot observe” (Patton, 2010).

One of the primary goals of the study was to understand how the participants (in terms of management practices) contributed to labour litigation against the Swaziland Government. The interview approach provided a link between the factors contributing to labour litigation to the factors involved in management practices in the Swaziland Government. The participants expressed the ways in which they viewed judgements on labour litigation. Interviewing allowed for the triangulation of information obtained from other sources and, thus, for an increase in the credibility of the study findings

In the two focus groups, the group sizes were nine in the first one and the 11 in the second one. Interviewing the officers allowed for the identifying of, and for the soliciting of knowledge from, those whom Patton (2010) calls ‘key informants’. Key

informants are people who are particularly knowledgeable about the inquiry setting, and who articulate such knowledge. Their insights can be helpful in assisting an observer to understand the events that have happened and the reasons for the events happening.

The current study's participants were interviewed between 14 June 2017 and 10 July 2017. For convenience, the interviews were held in conference or meeting rooms in the Ministerial Complex in Mbabane. All the interviews were conducted face-to-face, lasting from 30 to 45 minutes each. With participant approval, the interviews were recorded, so as to ensure accurate transcription. Handwritten notes were also taken during each interview, which enabled the researcher to note down the key points of interest, and their relative importance, for reference at a later stage.

A pilot interview was carried out prior to the commencement of the actual research. The conducting of such a process allowed the interviewees to express their thoughts and feelings relating to the questions. The granting of such an opportunity allowed for the researcher to resolve any difficulties in terms of the wording of the questions and the structure, while also identifying any questions that might make a participant feel uncomfortable. The data collected in the pilot interview were not included in the research results.

### **3.7 Procedure**

The researcher used the semi-structured interview approach and a uniform set of open-ended questions to obtain: (a) demographic information on the participants, and (b) the participants' perceptions and experiences regarding labour litigation against the

Swaziland Government (see Appendix 2: Interview Schedule). Open-ended questions were used throughout the interviews to encourage the participants to respond freely and openly to questions. Probing and/or follow-up questions were used, when necessary, to encourage the participants to elaborate on, or to clarify, a response made. The above created a sense of rapport and empathy between the researcher and the participants. The researcher sought to use language that was comprehensible and relevant to each of the participants interviewed.

The interview schedule was structured into three sections, being the participants' background information, experience and opinions. After each interview, a transcription of the recordings was done. Each transcript was reviewed against the recordings to ensure transcript accuracy. The transcripts were then presented to the participants for review.

### **3.8 Ethical considerations**

A research proposal was submitted to the researcher's supervisor, after which it was submitted to the FEMS PGSC for approval. Subsequently, it was approved by the Namibia Business School. Ethics is the discipline of dealing with what is right and wrong within a moral framework that is built on obligation and duty (Conroy, 2010).

Kumar (2011) acknowledges that it is unethical to accumulate information without the knowledge of the participants, and their expressed willingness and informed consent. Therefore, the researcher first sought the permission of the controlling officers in the affected ministries and departments, to secure the participation of officers from the various ministries and departments concerned. The researcher informed all the

participants that their participation was on a voluntary basis, and that they were free to withdraw from the study at any time. The participants were also requested to sign the appropriate consent forms. All of the participants signed a consent form stating that they were willing to participate in the interview, while also ensuring their confidentiality and anonymity throughout the process.

The participants were also advised that they were under no obligation to answer any questions with which they might not have felt comfortable. The participants were given advanced notice prior to the interview, with an indication of the type of information that was required during the interview. The reasons for the research being carried out, and how the information that they provided would be used, was also shared. Prior to the commencement of each interview, the participants were told of how long each interview would last, with a sufficient amount of time being allowed both before and after the interview for the participants to ask any questions relating to the research topic concerned.

Labour litigation can be highly charged, and thus a sensitive matter for many individuals. While preparing, researching and analysing the subject matter concerned, and the data obtained, the researcher was aware of such sensitivities in relation to the questions being asked, and of the possible vulnerability of the participants involved.

### **3.9 Data analysis**

Qualitative data analysis tends to be inductive. The analyst identifies the important categories in the data, as well as the patterns and relationships involved, through a process of discovery. The 'text' that the qualitative researchers analyse is, most often,

the transcripts of the interviews or the notes from the participant observation sessions, although it can also refer to pictures, or other images, that the researcher examines. The text becomes a way of accessing what is ‘behind the numbers’ that are recorded in the quantitative analysis, so as to be able to see the richness of the real social experience involved (Schutt, 2011).

Once the data were transcribed, they were then coded, analysed, interpreted and verified. The process of transcribing the interviews can help the researcher to gain depth of understanding of the subject, from repeatedly listening to, and reading, the transcribed interviews involved (Seidman, 2013). Coding of the data began once all the data were fully transcribed. The codes applied were keywords that were used to categorise, or to organise text, with them being considered an essential part of the qualitative research involved (Creswell, 2012). The data were then analysed, categorised and organised into themes, with further subthemes emerging through the coding process. The themes that emerged were assigned a specific code accordingly. The data were interpreted by means of identifying any reoccurring themes throughout, and through highlighting any similarities and differences in, the data. Finally, the data verification was done, involving a process of checking the validity of the understanding involved, by means of rechecking the transcripts and codes, thus allowing the researcher to verify, or to modify, the hypotheses previously arrived at (Rao, Sivakumar & Sinha, 2017).

### **3.10 Chapter conclusion**

The current study was aimed at finding out the factors contributing to employee litigation. The qualitative study used Swaziland’s public service as a case instance.

The data collection method used was the focus group, and the in-depth, interview. The interviews were guided by means of a structured questionnaire. The interviews were recorded using a tape-recorder. The data obtained were analysed using qualitative data analysis methods, with the data being written in transcript, and the transcripts being analysed for coding purposes. Once the codes were established, they were categorised. The categorisation created the themes that constituted the variables used in the data analysis.

## CHAPTER 4

### RESULTS AND DISCUSSION

#### 4.1 Introduction

The current chapter discusses the findings of the study, which was qualitative in nature, and which used the focus group interview method for the data collection. The purpose of the study was to explain why the litigation against the Swaziland Government occurred and continued to proliferate. The study sought to answer the research questions asked, as well as to identify what factors contributed to the labour litigation against the Swaziland Government, and what the management practices was that caused labour litigation to occur in the Swaziland public sector.

The study informants were all experienced public service officers, with work experience in the management level ranging from four to over fifteen years. They were all in middle management, with the authority to institute disciplinary actions and to recommend the dismissal of employees. The participants were all women, as a result of the prevailing demographics, where, in terms of the HR cadre, there were 82% women, as per the public service report for 2016. Table 4.1 below shows details of the focus groups that were conducted in the two instances.

**Table 4.1: Focus groups held**

<b>Date</b>	<b>Venue</b>	<b>Number of participants</b>
June 14 (Focus group 1)	Public Service Conference room	9
June 21 (Focus group 2)	Ministry of Labour conference room	11

The focus group interviews, which lasted for 30 to 45 minutes, were conducted in English. The information obtained was recorded by means of audio recorder and handwritten notes.

The data was also collected by means of conducting in-depth interviews of the selected officers. The tool for data collection was the same as the one that was used in the focus group interviews. Also, in the in-depth interviews, audio recording was done, and handwritten notes were taken.

#### **4.2 Data generation process**

The results were generated by means of the grounded theory process, with the first activity entailing the transcribing of the audio recording and the handwritten notes. In the analysis of the transcripts, coding was done, consisting of the labelling of the emerging issues. The three codes that were derived from the transcripts are listed and described in Table 4.2 below.

**Table 4.2: Issue codes**

<b>Code</b>	<b>Description</b>
SOUFLIT	Sources of conflict
UNFAIR	Unjust management practices
STRADIFCT	Structural defects
MGTROL	The role and competencies of managers
COMM	Communication issues and practices

The codes facilitated the formulation of the three issue-related categories to emerge from the analysis. The categories were the sources of conflict, the competency of the supervisors, and unfair practices.

The result to the question ‘Does your current position/office/department have any participation in the labour litigation resolution process followed against your employer?’ was that all the informants’ departments had had a labour litigation case made against them. The informants recognised unfair procedure as being the fundamental source of the labour litigation cases involved.

Responding to the request to elaborate on a labour litigation case that the informant has experienced, one respondent illustrated that there was a case where an employee had been dismissed from work because of their refusal to be transferred to another workstation. The court concluded that the transfer had been unfair, because there was no need for it to have taken place, since the job at the new station was the same, and required the same skills set as the previous workstation had demanded. Accordingly, the court stated that labour legislation was specific to the conditions for the transfer. Several of the respondents elaborated on cases that indicated that most of the cases had been brought against their departments due to a lack of appreciation of the requirements of human rights law. The discussion of the experience of the informants revealed a total of 19 court cases, with the court cases revolving around issues of unfair dismissal due to perceived subordination; wrongful interpretation of the law and procedures; false sense of authority of supervisors; violation of basic labour rights; ignorance of the collective agreements; and the lack of procedural disciplinary actions.

Such issues revealed ignorance of the prevailing labour legislation, policies and procedures. The above, which comprised the critical issue category, contributed to the analysis of the results. In the 19 cases that were described by the informants, 12 of them had already been concluded in the courts, with the State having lost 10 of them, with one case having been judged in favour of the Government and with the other having been referred back for dealing with according to the internal processes.

Responding to the question ‘if you were the supervisor, what would you have done to prevent your ministry or department from being litigated against?’ an informant said, “I could have established a disciplinary panel that is shared by a person external to the organisation”. An informant a human resource department noted:

I would have sought legal opinion from the legal department of the ministry, before taking the decision to recommend dismissal of the employee, I believe dismissal demands due diligence and vigorous consultations and participation.

The above responses expressed the perception that most disciplinary actions are hasty and lack proper and adequate consultation and participation in the organisations concerned. The wording of the responses to the above-mentioned question showed some intensity, as far as the wording went to describe what was not done, rather than to explain what needed to be done, or what the informant could have done. Most of the labour litigation cases were perceived as possibly having been avoidable, if more consultation and participation had taken place than occurred at the time.

The discussion about the question relating to management practices in the Swaziland Government related to labour litigations. The informants expressed their belief that the public supervisors were divided into two categories, with one comprising those who were in a managerial position due to their academic qualifications, and the other comprising those who were appointed due to long service or political connections. The two categories revealed different attitudes to their work. While the group that was employed due to their academic qualifications show cognisance of the relevant legislation, policies and procedures, the second group used their acquired authority to impose on, and to manipulate, the processes concerned. The evidence on the studied cases showed that there was an equal sharing of labour litigation cases among the two groups. The reality was explained by the academically trained group as being due to the collective approach to dealing with issues within the departments, which enabled the second group to impose their world view on the team.

In relation to what needed to be done to avoid future labour litigation in the public sector, the two responding groups exhibited distinctly different perspectives and recommendations. The academically trained group expressed the need to develop effective internal labour-centred policies and procedures, while the politically appointed group felt that the recruitment of staff should focus on the respect for authority and developmental outlook. They viewed the reasons for the labour litigation as being due to the lack of respect for authority, and to the lack of a developmental attitude. While the academically appointed group recommended actions that were based on the respect for labour rights and on adherence to the established policies and procedures, the other group's recommendations were focused on the development of organisational loyalty.

In terms of the discussion on what measures should be implemented to reduce, or eradicate, labour litigation against the Swaziland Government, the responses obtained were polarised towards three poles. One pole related to the modification of the labour management structure by the strengthening of the law, policy and procedures, while another related to providing adequate capacity for the management in the public sector, and the third related to changing attitudes among the management and the employees. The latter entailed reviewing organisational structures with a view to decentralising the HR and legal offices, so that they would be closer than before to the outstations in terms of guiding and implementing the HR policies and procedures.

Textual analysis of the transcripts resulted in the development of the issue codes. Open coding was done, entailing the labelling of concepts. The codes were grouped in such a way as to develop the required issue categories, with such categories being based on the relevant properties and dimensions. The categories were also grouped to produce the themes that were derived from the generated data, with the themes being those of: (1) management practices; (2) the inadequacy of structural guidance; and (3) incompetency. Table 4.3 below maps out the themes, categories and open codes assigned.

**Table 4.3: The issue map**

<b>Theme</b>	Management practices	Inadequacy of structural guidance	Incompetency
<b>Category</b>	Lack of diligence	Poor HR Policies	Poor HR training
<b>Code</b>	Poor documentation	No obligation to consult	Lack of appropriate experience
	Unfair practices	Poor access to good legal advice	Uninformed decisions
	Disregard of procedures	Obligation to conduct document validation	Lack of ability to conduct information verification
	Non-adherence to policy and procedures	No obligatory interdepartmental collaboration	Poor academic qualifications
	Unethical behaviour	Fragmented HR functions across departments	
	Organisational injustice	Poor HR precedents	
	Lack of confidentiality		

The theme of management practices related to the unfair and unethical management behaviour category. The category consisted of favouritism, the failure to follow established policies and procedures, inconsistencies in dealing with labour issues, the use of power for punitive purpose, and the illegitimate use of authority. The theme concurs with the conclusion of Nikoloski, Dimitrova, Koleva and Kacarski (2014) in the literature review that labour relationships are eroded by the unethical practices of management. The respondents also expressed the view that organisational injustice was the fundamental reason for the labour litigation cases, which was very difficult to defend in the courts. Nikoloski et al. (2014) further comment that good labour relations prevail where trust exists between the employees and management. When the employees perceive that there is absence of trust, they resort to such actions as labour litigation. Unfair and unethical behaviour begets mistrust. Favouritism occurs when an individual in a position of authority purposely gives a specific person an advantage or benefit that they do not deserve. As such, it is a form of corruption. Corruption is when an advantage or benefit is provided so that one gains something thereby. The respondents mentioned that management used their authority to provide the advantages of benefits so as to gain sexual or monetary benefits (i.e. as bribes). Favouritism is closely linked to nepotism. Nepotism is when an advantage is given to officers who share, or who are defined, in the same way. Such advantages can be given to spouses, girlfriends, clans, same church members, university associates, and fans of the same football club, among others.

The practice of management failing to follow established policies and procedures in dealing with employees was another cause of labour litigation. The respondents expressed that the above failure was deliberate in most cases, with it being used to

ensure that a decision or action was taken as intended by the managers. The above had occurred in three different areas, and it had caused several litigation cases. The above irregularities existed in terms of the decisions that were made regarding employees' participation in international training courses, in terms of the allocation of government houses, and in terms of job promotions. Colvin (2011), as was discussed in the literature review, found that most labour-related cases were due to discriminatory practices. The managerial practices aimed at providing benefits to selected individuals, and at selectively applying policy and procedures were discriminatory. Discrimination was the cause of some of the labour litigation cases cited by the respondents.

The underlining factors in the theme 'inadequacy of structural guidance' were poor HR policies, the lack of obligation to consult, poor access to good legal advice, the obligation to conduct document validation, the lack of obligatory interdepartmental collaboration, the fragmentation of HR functions across departments, and poor HR precedents. The perception of the respondents was that the current HR policy, General Orders and Circulars, was not strong enough to force management to conduct its business fairly. The above was because the General Orders, which are the current Government's colonial inheritance from the British, are not law, so that they are not enforceable, and they are not aligned with other existing legislation, such as the Employment Act. The General Orders, which were used by the British to govern the civil service, have not been reviewed for a long time. Circulars are issued by the Government from time to time, so as to address, or to guide, the public service administration. The circulars are not comprehensive, but issue-focused. The policies expressed in the circulars change from time to time, and they usually do not apply to all categories of the public service. For example, there are no clear criteria for deciding

which position should attract an acting paid allowance. The acting paid allowance is given to officers who assume a position in an acting capacity, while the incumbent of the position is away from official duty for any period longer than fifteen working days. The respondents felt that the circular on the allocation of government houses was not clear on the criteria for allocating government houses. The lack of clarity made the allocation fluid, with it changing all the time from one officer to another. New employees were awarded government houses, while others were on the housing waiting list for years. Training was also cited as being one area where the employees felt that the policy did not seem to be strong enough. Such findings are in line with the assertion in Fenwick, Kalula and Landau (2007) that the employment relationship is a mechanism through which rights and duties are conferred in terms of organisational policies based on the national laws. Colvin (2011) views the uncertainty regarding policy as being a reason for the delay of actions by management on HR issues, with it being a reason for the employees to litigate against an organisation successfully.

The respondents perceived the HR policies of the Swaziland Government as weak, or non-existent, due to their individual, and sometimes personal, experiences with them. Perceptions are a product of the lack of information, or of misinformation. The above indicates that the employees were not informed about the policies concerned.

The respondents indicated that management did not seem to be obliged to consult with the other employees. The Swaziland civil service is unionised, with there being form agreements between the unions and the Government. Employee disciplinary actions entail that the union should be consulted and involved. The respondents alleged that

the unions were side-lined on the direct violation of signed agreements. Cases existed where the labour litigation was initiated by the union due to management practices that violated the recognised agreement and legislation. In particular, the case between the Swaziland National Association of Civil Servants (SNACS) on behalf of Nursing Assistants v the Ministry of Health and Social Welfare and Others concerned management's refusal to grant the nursing assistants the benefits to which they were entitled, as per the recognised agreement.

The final theme was incompetency, which was the lack of skills and knowledge to conduct the functions of management in an effective and efficient manner. Although there was a HR department in each ministry, the HR functions were conducted by all the managers and supervisors. All managers and supervisors were required to be literate in HR management. The respondents regarded most of the public sector management to be incompetent. They gave the reason for their view as being due to the majority of the managers having been politically appointed, or as having been appointed based on their seniority, and not as having been appointed due to their qualifications and other merits. They stated that there was widespread flouting of legislation and policies, which amounted to incompetency.

General Managers need to be trained in HR skills. The handling of HR issues has resulted in an increase in the number of labour litigation cases, because of the poor managerial HR practices. Such general managers as the heads of sections and departments are promoted from the non-HR technical fields. The Government, through its respective ministries and departments, does not provide adequate orientation and

training, especially on the HR function, to the newly appointed general managers. The respondents expressed the view that the managers disregarded the basic principles of HR relations, because they had experience in dealing with their specific technical fields, but not in HR management as such.

The decisions that were taken by the managers indicated that they were not informed. Their uninformed state was due to the fact that the managers did not consult the other officers, the relevant offices, or even the official documents. The court cases concerned were lost by the Swaziland Government because the decisions taken by management pertaining to employees were uninformed.

HR functions entail the collection of accurate information about workers, which becomes the basis for decision-making about such issues as retirement, training, the allocation of benefits, and postings. Litigation issues emanate from the employee information being inaccurate. In the employment agency of the Ministry of Education and Training, which employs teachers, the Teaching Service Commission (TSC) has been charged with dismissing some teachers, due to the latter's fraudulent academic certificates. The TSC has also been charged with enforcing retirement. Poor record-keeping and the failure to validate documents has led to litigation that the Government has lost, at great cost. In respect to retirement issues, it has been found that some employees have submitted birth certificates with false birth dates and various other documents that contain contradictory information regarding the date of birth to the Swaziland Government, thus creating problems when the respective officers reach

retirement age. Such cases end up in litigation, in terms of which the poor verification of documents makes it difficult for the court to rule in favour of the Government.

The respondents blamed the tendency to labour litigation on the poor academic training of the supervisors concerned. Many of the supervisors with HR responsibilities were not formally trained in HR management. The lack of formal experience and training exposes the employees to mistreatment by the managers.

The findings of the study were obtained in response to the set research objectives, as well as to the questions asked. The responses obtained to the study questions explored the factors contributing to labour litigation against the Swaziland Government. The factors that emerged from the data analysis were presented in the following sections.

Objective one was aimed at exploring the factors contributing to labour litigation against the Swaziland Government. The first factor to consider was the existence of a conflict-generating situation, or sources of conflict.

### **4.3 Sources of conflict**

#### **4.3.1 Unfair labour practices**

The past practice of promotion being based on years of service, and on the level of the organisational hierarchal ladder at which the employee was positioned, resulted in poorly qualified personnel being elevated to senior positions in the Swaziland Government departments. As the Swaziland Government employed subordinates that

were more relevantly qualified to critique the practices and decisions of their superiors, the result was conflicts and confrontation, which caused unfair and discriminatory actions to be taken against the junior officers concerned.

Policy changes that introduced academic qualifications as forming the basis for promotions came up against the existence of cliques, which had thrived upon providing promotions to friends. The older employees were able to demand promotion to positions for which they were not qualified and for which they were rewarded, which generated conflict that ended in charges of unfair treatment. The Government-General's Orders and the civil service regulations concerned stipulated that promotions should be based on merit, including performance, qualifications and seniority.

One respondent highlighted a case in her department as follows:

We had a case in the Ministry of Tinkhundla, whereby we were required to provide information, whereby an officer claimed that she was promoted to a senior position. She claimed unfair labour practice. The officer requested the employer for a pure variation, which, put simply, is a change from one cadre to another with no change in grade, as contained in the governing government General Orders. The employee did not understand the [meaning of the] term 'variation'. She wanted to claim money from the Government. They are still handling the case – it has not [yet] been settled.

### **4.3.2 Poor record-keeping**

Poor record-keeping can be the result of a deliberate corruption action, or the result of incompetency. The findings showed that there was poor record-keeping of HR information. Poor recording was another source of conflict, which was due to the officers responsible for human rights not having been trained in the skills required to determine the authenticity of documents. The above had resulted in the acceptance of questionable documents as the true records involved.

Officers have been employed based on the documents that have been supplied with wrong information. Poor recording has resulted in the official records being easy to alter. In some documents, the wrong information was recorded, which was difficult to amend. The decisions made on the basis of the records involved were not easily reversed, even when the discrepancies were identified, without the affected officer challenging the reversal concerned.

Common errors in documents pertained to the date of birth. The employees submitted a variety of documents, with different dates of birth being recorded on each. In some instances, they resubmitted the same document with varying details, such as the date of birth. The documents concerned included the birth certificates, the marriage certificates, the income tax registration forms, the employment forms, and the other personal identification documents. The employees submitted documents that contradicted one another. In many instances, the documents involved have been found to be stolen and fraudulent.

A respondent narrated a case where two different surnames had been recorded for one individual. The respondent said:

An officer from Teacher Commission Service appears in the records as a Malaza and Nhlabatsi in the system. When an investigation was conducted, she was adamant that she was never a Malaza. It appeared like the records had a lot of information about her that did not belong to her. This created a problem with the family. The records, though, showed that the officer was receiving a salary as a Malaza. Her employment documents showed she was a Malaza, and she was paid a salary as such. The legal problem was that the department had accepted the two documents of her identity on the different names.

#### **4.3.3 Inadequate training policy**

Training, which was one of the major benefits that the government employees enjoyed, was found to be a major source of conflict in terms of the allocation of government houses. Although the policies and procedures guided the training, the management practice did not adhere to them. Such was the bone of contention in many cases of discrimination. The key issues concerned the eligibility for training. The eligibility was based on the duration of service, and on the need for the training, among other aspects. The regulations setting the criteria regarding the duration of service vacillated from year to year. Also, the training policy states that an officer who has attained the age of 45 years is not eligible for long-term training. The issue is highly contested.

#### **4.3.4 Retirement date challenges**

The date of birth was critical in determining the retirement date for an employer. When there was conflict concerning the date of birth, the retirement concerned was problematic. Retirement dates have been the source of labour litigation cases, with the employees involved having challenged the employer in respect of the retirement date. Such difficulties arose when the employer had accepted two different dates of birth for the employee concerned. The processing of benefits upon retirement was delayed in the absence of documents related to employment and to the movement of an employee.

#### **4.3.5 Lack of safe record-keeping**

Records were not safely kept. Sometimes they were kept in places where they could be accessed by anyone, thus documents could be removed from personal files. It was common for documents relating to misconduct and discipline to disappear from the personal files, and the employees challenged the taking of disciplinary measures in the absence of evidence of misconduct, and in the absence of the taking of prior disciplinary measures.

#### **4.3.6 The excessive amount of time taken to resolve issues**

Complaints, grievances and disciplinary matters were not dealt with promptly, as they took a long time to reach the headquarters from the outstations. The matter was further complicated by the bureaucracy involved in the resolution of any issue, upon the associated documentation reaching the headquarters. The following comments were made in the above respect:

The employees complained of safety issues related to the delay in procuring safety equipment and supplies. Even when the Ministry might have had funds, there was a lengthy process of communication involved in seeking the required authority from the Ministry of Finance to procure the necessary safety equipment and supplies. The following statements were made in relation to the above issue:

This is whereby employees complain of violations, the time taken to investigate at departmental level and forward the findings to the relevant body for decision-making are lengthy. The principal secretaries, who are controlling officers, can only recommend to the Civil Service Commission who has the authority to employ, discipline and dismiss employees. The responses from the civil service commission are not prompt.

We disagree as [the] public service. We find ourselves advising [the] Attorney-General about the differences, and, at the end of the day, we do not know which one to take. We go to court and, at the end of the day, [there is] no decision [made] by [the] judge. There is much postponing of cases.

#### **4.3.8 Growth in literacy**

The workforce was becoming more literate and knowledgeable regarding compliance with the rules, procedures and policies and the demands for all provisions to be obeyed that were encapsulated within them.

#### **4.3.9 Centralised management**

The HR office at the headquarters under the administration was headed by the Undersecretary (Administration). Various heads of departments in the different ministries were responsible for the supervision of staff. The practice had led to the heads of department acting in an administrative capacity, and handling all such HR issues as leave, training and discipline, with the HR office only being notified of the decisions taken in the above regard. The aforementioned officials were sometimes ignorant of the associated procedures and HR policies; hence, some subordinates came to challenge the decisions taken by the heads of department.

#### **4.3.10 Personal favours**

Personal favours and vendettas were being settled at the expense of the Government. Some employees offered their friends, rather than qualified, performing and deserving officers, promotions, resulting in conflict. Sometimes, deserving officers were overlooked for promotions because of misunderstandings that had arisen with their supervisor. In relation to the above, one of the respondents stated:

It is basically on the achievement part, because you find that the incentives that we give when they are received by whosoever in court, they side with them. We have [the] same information, but one condones the misconduct, and we intentionally [do] not present the facts.

#### **4.3.11 Inconsistencies in treatment and discipline**

The practice of shying away from the disciplining of misbehaving officers, but rather transferring, or even promoting, delinquent officers seemed to encourage delinquency, which was not tolerated by the other officials. Officers challenged the inconsistency

in treatment and discipline, with the following statements being made in the above regard:

I think there are issues, because as [a] government, we find ourselves not on the same page, which is why we keep losing them. I can say that we see things differently, and say something else, maybe, with the legal advisor, even though we are all [part of the same] government. The information is the same, and we all have the same personal files.

#### **4.3.12 Lack of proper documentation**

Improper documents were accepted by the Government without the officers producing an affidavit. The documentation concerned was not up-to-date. As was previously discussed in subsection 4.3.3 above, “The departments accepted the two documents, the Malaza and [the] Nhlabatsi.” Officers should be educated before taking a step in litigation. Further in relation to the above-mentioned case, one of the respondents stated:

We couldn't have done anything, because the officer asked the employer. Somebody should have explained to her, but we tried. It is just that the officer believed that [the] Government owes her something. They should have educated the officer, and this falls under the duties of ... Human Resource ... [as] ... advised by the heads of department.

#### **4.3.13 Weakness of policy**

The Office of Human Resource and Development required strengthening and capacity-building, as one respondent emphasised in the following words:

People in management position[s] do not observe government rules and regulations. Mostly, it is from management, while employees are also to blame for litigations, because they do it deliberately.

#### **4.3.14 Solutions to the problem**

Some participants observed that certain employees did not take the HR offices seriously. In relation to the above, they noted:

There is a great need of [i.e. for] capacity-building. They should be equipped professionally, because they think [that] they are much better than the Human Resource, such that the input is not productive. Something has to be done about the value of the inputs of the Human Resource [office].

Supervisors should stop assigning officers duties that they have not been employed for, like assigning [a] labourer [the] duties of a driver. This leads to litigations.

Officers of Human Resource need empowerment, because, in [i.e. on] the issue of date of birth, you cannot be accepting the two different documents from one person. This is like accepting that one person was born in 1992, and again in 1993. There should be a policy to have one acceptable date of birth.

#### **4.4 Unethical practices**

The prerogative of management is to make decisions that ensure that the objectives of the organisations are achieved and to ensure that workers are working in a good environment, and achieving their personal goals. The above is explained by the psychological contract. DiMatteo, Bird and Colquitt (2011:452) note that losing a job because of perceived unfair treatment, such as due to a false accusation of incompetence or organisational politics, bad management decisions and practices can provoke deep-seated anger and resentment. Cases were cited whereby the management had used their powers and authority to settle personal scores. Personal favours and vendettas were being settled at the expense of the Government. In relation to the above, a respondent said:

It is basically on the achievement part, because you find that the incentives that we give, when they are received by whosoever in court, they side with them. We have [the] same information, but one condones the misconduct, and we intentionally [do] not present the facts.

#### **4.5 Lack of proper documentation**

Improper documents were being accepted by the Government without the officers concerned producing an affidavit. The documentation was not up-to-date.

#### **4.6 Lack of training and education of the staff**

In connection to the officers requiring to be educated before taking a step in litigation, see the response made under subsection 4.3.12 above.

#### **4.7 Discussion**

The findings of the current study, which are congruent with the dictates of the psychological contract and organisational justice, are consistent with Birkbeck's (2012) conclusion pertaining to the breakdown of the psychological contract. Equity is a dimension of the psychological contract. The findings confirm Nikoloski, Dimitrova, Koleva and Kacarski's (2014) view that unfairness is an element that results in employee litigation. The experience of employees of the fairness (or the lack thereof) in management practices is a primary factor in deciding on whether or not to litigate. Fairness is ensured by conforming to organisational policies and procedures that are designed to be fair. The policies and procedures cannot make an organisation just. The agents who conduct the organisation's work need to do so fairly. Several aspects of an organisation depend on the fair behaviour of the managers involved, with the above resonating positively with the conclusions of Jones and George (2003) that organisational disputes are due to the interaction of management and employees. The study found that the reasons for employee litigation tended to arise at the interaction of the employees and the management.

Perceptions of organisational justice enhance the psychological contract, conformity with which is seen by an increase in the amount of organisational loyalty concerned, which entails the psychological identification with the organisation that reduces the likelihood of employee litigation. Traditionally, public servants have been found to be relatively loyal, with them tending to identify with the Government, their employer. The decision to initiate litigation against the Government is an extreme decision, which results from the perception of unfair treatment. The above is in line with Nikoloski, Dimitrova, Koleva and Kacarski's (2014) finding that employee litigation is a failure

of the HR department, in terms of the inadequate provision of a policy and procedure framework that is fair and just. The employee litigation against the Government indicates the organisation-wide belief that management practices are unfair, discriminatory, inconsistent and not in accordance with established policies and procedures. The decisions of the courts, in terms of employee litigation, agree with the perceptions of the workers.

Management competency is critical in terms of ensuring conducive and good employee relations. The HR function is aimed at ensuring that employee problems are resolved amicably and quickly. The current study revealed that one of the causes for litigation was the failure of the management involved to resolve issues quickly and amicably. The above concurs with the findings of Bertain et al. (2014), who found that unresolved workplace conflicts sometimes led to litigation. To avoid employee litigation, management should develop and enforce fair, legal and just HR procedures. All managers and supervisors should also be required to act in accordance with the prescribed policy and procedures.

Strebler (2004) found that poor configuration of the organisation resulted in conflicting HR practices. The findings of the study, in the above regard, were consistent with those of Stabler (2004), that the decisions taken by some managers were not in line with the law and organisational policy, resulting in disputes that might have resulted in employee litigation. Mitigation approaches include supervision, responding to complaints, discipline, and training. The effectiveness and efficiency of the HR department depends largely on organisational design. Whether the HR department is

able to be assertive in terms of the organisation in question is debatable. Whether it has the desired independence, authority and power over all the personnel and organisation units involved is questionable. The nature of organisational politics becomes relevant, in respect of who, among the superiors, can reverse a decision made by the HR department. If employees are protected by a powerful superior, the effectiveness and efficiency of the HR is minimised, allowing for the development of resentment in an organisation, hence the existence of employee litigation cases.

Poor administrative practices tend to expose an organisation to employee litigation risks, and to reduce the ability of the organisation to defend itself. Justice and fairness are attained by keeping employee records confidential. Management that flouts the law increases an organisation's risk for litigation. The current study found that, where there is a high level of noncompliance with HR laws, there is an increased likelihood for employee litigation. In Fenwick, Kalula and Landau (2007), the above is confirmed. The present study further revealed that, in the Government, there was poor management of employee records, resulting in many people being able to access the records without authority. The above was an indicator of incompetency and of the gross violation of procedures and the dereliction of duty. Such challenges manifest an attitude among the managers and the administrative staff that was negative to the duty of care. The defence against employee litigation depended on the safeguarding of accurate and proper documentation. The results showed that crucial records of the employees were missing from their personnel file, and that the Government had lost court cases due to the above-mentioned issue.

The poor record-keeping was connected to the poor verification of records that were accepted by the Government. Documents that were not authentic, and that were contradictory, had been found in the study to form part of the official documents. The above also indicated incompetency and negligence of duty, which might point to practice that was designed to further the commission of fraud or corruption.

Benefit management is another critical role of the HR department. Such management can also be a source of great misgiving and resentment if it is not done fairly and justly. In the present study, huge problems were found with benefit management, and they were a significant contributor to incidences of litigation. Edwards (2003) also found that wage and job variation was the major lawbreaking practice that led to litigation. Benefits like training, staff house allocation, promotions, and transfers, among others, should be handled in an orderly, accountable and transparent manner. It is critical that management practice is based on the principles of accountability, transparency and participation. Decision should be taken by committees in full view of all the internal stakeholders.

The findings of the current study were consistent with the literature in the field.

#### **4.8 Validity and Reliability**

Validity is the extent to which a measure what it purports to measure (Flom, 2017).

In Focus Group validity measures if the participants in the focus group interview talked about the issues that the researcher believes that there were talking about.

While reliability in focus group is that the measurement was accurate and replicable.

In this study validity was determine by the similarity and consistency of the answers

by the two different focus group and reliability was proved by the accurate similarity of the answer in two groups.

#### **4.9 Conclusion**

The current study was qualitative in nature, with the data being collected using the combination of a focus group interview and an in-depth interview. The respondents were government officials at the middle management level, with some experience of working for the Government. The findings were that the labour litigation entered into against the Swaziland Government was due to several reasons caused by the management practices involved that were unethical and uninformed, as well as which disregarded the existing policies and procedures. The study also revealed the presence of poor record-keeping and the inadequate safekeeping of official documents in the public service. It also unearthed the reality that most of the managers were not academically qualified, due to the fact that they had been promoted based on their level on the management ladder. There was also rampant provision of the benefits of employees by the managers, who were discriminatory towards others.

The findings related to the study questions and the objectives. They also demonstrated the tenets of the organisation's justice theory, and explained the problem that had emerged in the organisation in terms of the breakdown of the psychological contract.

## CHAPTER 5

### CONCLUSION AND RECOMMENDATIONS

#### 5.1 Introduction

The research study appraised the phenomenon of employee litigation in the public sector, by investigating the factors that influenced employee litigation against the Swaziland Government. Adopting a qualitative research approach, the study used focus group and in-depth interview methods for the data collection. The informants for the study were the officers of the Swaziland Government who were in middle management, working in the departments of HR, legal and general management. The data collection took place over three weeks in Mbabane, Swaziland. The current chapter presents the conclusions of the study, recommending the actions that require to be taken by the government departments concerned so as to reduce, and eventually eradicate, employee litigation. The limitations of the study are also described.

The problem to which the study responded was the prevalence of employee litigation incidences in the public sector in Swaziland. The problem was evidenced by court proceedings documented in court records, and also in the records of the CCMA. The above had resulted in all the departments concerned having a budget allocation for litigation cases, which indicated that the problem was persistent, and that it had enshrined itself in the budget. Litigation is supposed to be a rare occurrence. Such frequent occurrence as was shown in the current research indicates the presence of a serious problem in the public sector's administration and management.

So as to shed some light on the identified problem, the study objectives considered exploring the factors contributing to labour litigation against the Swaziland Government, and the examining of management practices leading to labour litigation.

The questions that were formulated for answering by the study, so as to satisfy the objectives were:

- What are the key factors contributing to employee litigation in the public sector?
- How is the public sector coping with employee litigation?
- What are the strategies that can significantly reduce, or eradicate, the amount of employee litigation?

## **5.2 Factors causing employee litigation**

HR management is a fully fledged academic discipline, with fully developed knowledge and practices. The study showed that, in the public sector, every administrator and manager is regarded as an HR expert. The HR functions have been devolved to all managers, and even to the supervisors. Mistakes in the execution of HR functions by officers with minimal know-how and skills had resulted in employee litigation that had also resulted in financial loss to the Government. In the case between Griessel, Benjamin Quinton and Trade Kings, the court established the principle that the poor application of acceptable HR principle had resulted in the automatic declaration of unfair dismissal. The above had huge financial implications for the organisation concerned. The principle relating to the public sector was confirmed in *Phetsile Dlamini v Mbabane Clinic*, in terms of which the judgement awarded the employee a significant amount of money, because the administrators had not followed

the correct procedure for dismissing an employee. The above is basic knowledge for qualified HR managers.

The above case confirmed the finding that there were administrators and managers in the public sector who were not qualified in HR management, and who lacked the basic skills required for filling their position. The administrators lacked understanding of the HR procedures and of the consequences of not adhering to the established procedures. The findings concurred with the conclusion drawn by Colvin (2011) that employee disputes that end in litigation are due to administrators not knowing how to manage the contractual employee–employer relationship. Hardy et al. (2013) concluded that employees are generally more educated and informed than are their supervisors, and that they are intolerant to the violations, or variations, of contracts and procedures.

Discrimination in administration and management occurs when an administrator makes an HR decision that is not consistent, and which is biased towards benefiting a selected individual, or individuals, or which is intended to disadvantage an individual, or individuals. Discrimination was found to exist in the public sector. Some of the administrators and managers were treating their employees with discrimination. Employees who felt that they were victims of discrimination chose to become involved in litigation. The findings on the above-mentioned factor were consistent with those of Green (2011), who stated that, in one year in the United States, there were 75000 charges of employment discrimination against employers. The above is also attested to by the records of cases compiled by Judge Dunseith in Swaziland. The literature review on organisational justice concurred with the finding. Organisational justice, according to Baldwin (2006:1), refers to the extent to which employees perceive

workplace procedures, interactions and outcomes to be fair in nature. The study revealed that the perception of injustice is caused by administrators lying, being inconsistent, disrespecting their subordinates, and acting unethically.

Several types of discrimination exist in the workplace, such as sex discrimination and sexism. Sex discrimination is defined as unlawful sex discrimination, which occurs when an employer treats an applicant, or employee, differently and less favourably because of his or her sex or gender (ERA, 2013). Leave rules have sexual discrimination clauses. Men and women have different leave benefits. When a husband dies, the widow receives leave days, but not vice versa. The above has been a bone of contention. Sexism or gender discrimination is prejudice or discrimination that is based on a person's sex or gender. Sexism is expressed in the attitude and practice of the administrators. The Ministry of Education in Swaziland was charged by a teacher in connection with an officer refusing her entry to the Ministry because she was wearing pants.

The amount of literature abounds on the subject of unfair dismissal in the public and private sector. Volumes of court cases involve overzealous, and not fully qualified, administrators, with the material being linked to the two factors, unqualified administrators and discrimination. Although Swaziland is unaffected by racial and tribal discrimination, the motive of hatred can be observed. The Industrial Court Judge Mabutfo Dlamini, passing a judgement in the *Ngwenya Glass (Pty) Ltd v Presiding Judge of the Industrial Court of Swaziland and Others* (2013) confirmed the presence of such a factor, when he stated that the failure by the Ngwenya management to adhere to the *audi alteram partem* principle was a reasonable ground for unfair dismissal, and

an indicator of the lack of administrative and management skills. Discrimination cases covered the unfair allocation of organisational resources, like houses or study leave with pay.

Organisations, including the public sector, require good policies and procedures for the efficient managing of activities and people. Formalisation of the organisation minimises the litigation risk involved. To insulate the organisation from litigation and to reduce the likelihood of management blunder, there is a need for effective policies, procedures and guidelines. The public sector seems to move in slow motion, and out of tune with the times. The basis of managerial and administrative procedures is the General Orders, which were developed by the colonial administration for a different purpose than that for which they are currently used. Scheid (2011) states that a basic mistake that many employers make is not having an employee handbook that documents company policies and procedures, or not following through on the procedures outlined in the handbook when terminating the service of employees.

In some cases, where the procedures and policies are available, they are not clear enough to guide the administrators and managers. Administrators make decisions that are a cause of litigation. Corkery (1995) observes that poor public administrators and managers pose a litigation risk to an institution. Láoie (2017) concludes that, in agreement with the study findings, poor management skills carry long-lasting effects, which might negatively affect an entire organisation. The results of toxic, misguided leadership reach far and wide. Employee litigation is a priority.

The absence of understanding of organisational policies and procedures results in the poor coordination of important parts of the administrative chain. All HR activities take place under the auspices of HR. According to Bogaert (2006), all management decisions should be valid, consistent, objective, job-related, and ‘evidence-based’, meaning supported by reliable documentation. Failure results in a litigation risk. The factor concurs with the findings of the current study, which found that some of the management decisions made were neither valid, nor consistent. Instead, they were highly subjective, sometimes not job-related, and lacking in evidential or documentary support. Some of the managers that made HR decisions were not prepared, serious, or honest.

The study aimed at exploring the factors contributing to labour litigation against the Swaziland Government, at analysing the factors contributing to such litigation against the Government, and at examining the management practices leading to labour litigation. The study found the factors contributing to labour litigation to consist of the following:

- Some management practices were unethical, discriminatory and contrary to the established policies and procedures.
- The offices that shared the HR function, both horizontally and vertically, within the public service were poorly coordinated, including the HR, and the legal and general administration, encompassing the heads of sections and departments.
- The poor training of the management cadre, due to poorly designed internal promotion processes, meant that employees who were inadequately trained in management were promoted or recruited.

- The lack of effective policies, procedures and guidelines was coupled with poor supervision, and the lack of uniform application of the existing policies, procedures, and guidelines.
- The actions of the HR department and the legal department were uncoordinated.

The current study also found that the informal networks and the organisational relations could be used to further corrupt behaviour. The above was evidenced by some managers using their power and authority to promote, or to give undue benefits to, their associates. The above has been the cause of great resentment within the civil service, which has led to other employees litigating on the grounds of discrimination, making it difficult for the state to attain non-litigated outcomes. In the prevailing situation, benefits, promotions, training opportunity allocations, the allocation of government houses, and other privileges would be viewed as fair if done through a committee comprised of several managers, including HR officers and legal officers.

The present study was able to meet its objectives by unearthing the factors contributing towards labour litigation against the Swaziland Government, in terms of the prevailing managerial practices. How the judiciary affects the labour litigation against the Swaziland Government has still to be determined. Several judgements have been taken against the Swaziland Government that have set legal precedents, and which have had an effect on the interpretation and application of policies and procedures. The Swaziland Government has set policies and procedures that should be implemented uniformly, fairly and transparently, even though they are challengeable, since they are not enforceable, due to the lack of established law in that specific respect. No vacuum should exist in terms of governance or management, thus what is available should be

put to maximum use to create a stable environment, enabling maximum productivity in the civil service of the Kingdom of Swaziland.

The time taken to finalise the cases reported to, or lodged with, the Industrial Court might also have negative or positive effects for the employees or employers concerned, thus related research would be beneficial to the Swaziland Government. Corruption cases tended to be too lengthy, with the officers concerned remaining on suspension with pay for extended periods before the cases could be finalised. The financial burden of the payment of salary to the suspended officers might ultimately be dismissed when a case is finalised.

The present study only looked at the employer's perspective, thus the results obtained only encompassed the perspective of the Swaziland Government as an employer. Researching the perspective of the employees could enable a robust and encompassing dissection of the issues involved in the litigation against the Swaziland Government as an employer. Further factors could be revealed when the employees' perspective is researched. The current study could be used as a basis for further research into the factors contributing towards labour litigation against the Swaziland Government, and towards general labour litigation in Swaziland and the SADC regions.

The prevailing financial crisis in the Swaziland Government not only requires the Government to exhibit due diligence on the usage of resources, but general best practices in governance also require conformity with the principles of accountability, transparency, integrity, efficiency and effectiveness. Thus, the effective and efficient

use of all resources, including both human and financial resources, for purposes of maximum productivity are very important for development as set out in the National Development Strategy.

### **5.3 Recommendations**

Based on the findings of the current study, in order to reduce the amount of employee litigation against the Swaziland Government, with the intention of eradicating unfavourable settlements and judgements against the Swaziland Government, the following recommendations are made.

#### ***Recommendations for the Swaziland Government***

The researcher recommends the following:

- All HR policies, procedures and rules should be updated and formalised as soon as possible. The policies should be based on recognised HR principles. Currently the Swaziland Government uses the pre-independence Government General Orders as the attaining HR policy which needs to be updated and repackaged into respective policies such as training policy.
- All employees' promotions to administrative and management positions should be based on valid academic qualifications through the implementation of formal schemes of service.
- All current administrators and managers should receive HR skills training, including on ethical conduct.
- All administrators and managers should be obliged to read and understand the Public Administrator's Code of Conduct.

- The Government must restructure the HR Department, by centralising the function.
- All public employee records and documents should be safeguarded.

***Recommendations for the current public administrators and managers***

The researcher recommends the following:

- All decisions made pertaining to the benefits of staff member should be based on ethical values and in conformity with all applicable laws, policies and procedures.
- The administrators should conduct the business of government without prejudice and discrimination.
- All business should be recorded as being conducted in a manner demonstrating quality and proficiency.
- The conducting of HR functions should be neither corrupt, nor fraudulent.

***Recommendations for the general public employees***

The researcher recommends the following:

- Employees should provide authentic documents to the HR Department.
- Employees should follow all the appropriate internal processes before they consider litigation.
- Employees should be truthful in their dealings with administrators and managers.

The HR Department is further advised to develop orientation and induction courses that focus on the upskilling of administrators and managers in the public sector. The Department should also closely supervise the non-HR administrators and managers who execute HR functions in the organisation.

#### **5.4 Study Limitations and Future Research**

The Swaziland Judicial System is a statutory body and hence stringent controls exist and not easily accessible to interrogation of its processes and procedures. For future research it is recommended that a study of the possible remedial action to be taken to address the problems identified by the study can be undertaken. A study on identifying the dispute handling procedures in place in Swaziland Government and mechanisms for faster resolution of litigation is also recommended.

## REFERENCES

- Baldwin S. 2006 Organisational Justice - Institute for Employment Studies.
- Bright, H. (2017, September 30). Brighthub. Retrieved from brighthub.com:  
<http://www.brighthub.com/office/human/resources/articles/102686.aspx>
- Borg, W. R. and Gall, M. D. (1989) Educational Research: An Introduction 5th. Ed.  
New York: Longman.
- Carmen Mach-Fell C. 2013. Organizational Injustice in the 21st Century
- Colvin, J. S. (2011). An empirical study of employment arbitration: Case outcomes and processes. *Journal of Empirical Studies*, 8(1), 1-23.
- Conroy, M. (2010, September). A qualitative study of the psychological impact of unemployment on individuals (Master's dissertation). Dublin: Dublin Institute of Technology.
- Creswell, J. W. (2012). Educational research – Planning, conducting and evaluating quantitative and qualitative research.(4th Ed.). Boston: Pearson.
- Cropanzano R, Bowen D E, and Gilliland S W. 2007. The Management of Organizational Justice. Academy of Management.
- Černiauskienė N. (2014) Strategic Management of Public Sector Institutions.  
available <https://www.scribd.com/document/354343240/2014-Strategic-Management-of-Public-Sector-Institutions-pdf-pdf>
- Doyle, T; Kleiner, B.H; (2002) "Issues in employment litigation", *Managerial Law*, Vol. 44 Issue: 1/2, pp.151-155, Available at <https://doi.org/10.1108/03090550210770731>
- Dube, B., & Magagula, A. (2007, October). The law and legal research in Swaziland. Hauser Global Law School Program. New York: New York University School Of Law.
- Edwards, P. (2003). The employment relationship and the field of industrial relations.

- In P. Edwards (Ed.), *Industrial relations: Theory and practice in Britain* (pp. 1-48). Hoboken, NJ: Blackwell.
- Fenwick, C., Kalula, E., & Landau, I. (2007). *Labour law - A South African perspective*. Geneva: International Labour Organization (International Institute for Labour Studies).for Employment Studies
- Gibbs, G. (2007) *Analyzing Qualitative Data*. London: SAGE.
- Gumede, N. (2017, March 15). cmac.org.sz. Retrieved from [www.cmac.org.sz](http://www.cmac.org.sz/index.php/dispute-prevention-manual?download=61:swazi-labour-law-vol-2):  
<http://www.cmac.org.sz/index.php/dispute-prevention-manual?download=61:swazi-labour-law-vol-2>
- Gumedze, N. (2014). Public sector employees and the right to strike (a SADC perspective). 27th Annual Labour Law Conference – The Changing face of the law: Tensions and challenges (pp. 1-23). Sandton: LexisNexis
- Hardy, T., Howe, J., & Cooney, S. (2013, February). Less energetic but more enlightened? Exploring the fair work ombudsman's use of litigation in regulatory enforcement. *Sydney Law Review*, 35:565–597.
- Henning, E., van Resburg and Smit, B (2004) *Fining Your Way in Qualitative Research*, Pretoria, Van, Schaik Publishers
- International Labour Organization (ILO). (2017, May 1). Swaziland – Freedom of association, collective bargaining and industrial relations. Database of national
- John W. Creswell J w. (2011). *Research Design Qualitative, Quantitative, And*
- Keller, B. (2005). The industrial relations field in Germany: An empirical and comparative analysis. In D. Lewin, & B. E. Kaufman (Eds.), *Advances in industrial & labor relations* (pp. 239-277). (Advances in industrial & labor relations, Vol. 14). Bingley: Emerald Group.

- Kumar, R. (2011). *Research methodology: A step-by-step guide for beginners* (3rd Ed.). Los Angeles: SAGE.
- L&E Global. (2016). *Employment litigation: Procedures, remedies and best practices*. Brussels:
- Laoie, A. (2016). Here are 4 problems that occur with poor management skills. *Entrepreneur*. 14 June. Available from <https://www.entrepreneur.com/article/276919>
- Latreille, P. L., & Saundry, R. (2016). *Towards a system of conflict management? Cultural change and resistance in a healthcare organization*.
- D. B. Lipsky A. C. Avgar, & J. Ryan Lamare (Eds.) *Managing and resolving workplace conflict* (pp. 89-209). (*Advances in industrial and labor relations*, Vol. 22). Bingley: Emerald Group.
- Leat, M. (2014). *Employee relations*. Edinburgh: Edinburgh Business School Heriot-Watt University.
- Lender, D., & Polkes, J. (2016, March). Weil, Gotshal & Manges LLP. Retrieved from [http://www.weil.com:http://www.weil.com/~media/files/pdfs/160185\\_litigation\\_trend\\_alert\\_march2016\\_v8.pdf](http://www.weil.com:http://www.weil.com/~media/files/pdfs/160185_litigation_trend_alert_march2016_v8.pdf)
- Lunn P. (2011) *Discrimination in the labour market: nationality, ethnicity and the recession*. *Irish Experience, Work Employment and Society* Vol 25, No 4 pp 7 – 14
- McBain, L., & Smith, J. D. (2010). *Strategic management in the public sector*. E-LeaderSingapore, 1-11. Available from [https://www.gcasa.com/conferences/singapore/papers\\_in\\_pdf/mon/McBain.pdf](https://www.gcasa.com/conferences/singapore/papers_in_pdf/mon/McBain.pdf)

- Nikoloski, K., Dimitrova, J., Koleva, B., & Kacarski, M. E. (2014). From industrial relations to employment relations with focus on employee relations. *International Journal of Sciences: Basic and Applied Research (IJSBAR)*, 18(2), 117-124.
- Olsen, C. (2014). Investment climate statement. Ezulwini: U.S. State Department.
- Organizational Justice. *Academy of Management*
- Paludi, M. A., and Barickman, R. B. (1991). *Academic and Workplace Sexual*
- Patton, M. Q. (2010). *Qualitative research and evaluation methods*. Beverly Hills, CA: SAGE.
- Rajasekar, S., Philominathan, P., & Chinnathambi, V. (2013). *Research methodology*. Available from <https://arxiv.org/pdf/physics/0601009.pdf>
- Rao, M. B., Sivakumar, S. N., & Sinha, R. (2017). After sales service – A customer binder in VUCA World. *IOSR Journal of Business Management*, 90-96.
- Rousseau, B., Meintjes, C. and Barnard, C. 2002. SADC inter-regional comparative report (Development report 149, Development Bank of Southern Africa, South Africa).
- Schutt, R. K. (2011). *Investigating the social world: The process and practice of research*. Newbury Park, CA: Pine Forge Press.
- Secord, H., & Mackintosh, S. (2012). *What every director should know about industrial relations*. Uxbridge: Oakbridge Labour Relations Strategists.
- Seidman, I. (2013). *Interviewing as qualitative research – A guide for researchers in education & social sciences*. New York: Teachers College Press.
- Sikweyiya, Y., & Jewke, R. (2012). *Perceptions and experiences of research participants on gender-based violence community based survey: Implications for ethical guidelines*. Cape Town: South African Medical Research Council.

Silverman, D. (2010) **Qualitative Research**, 3rd edition. London: Sage – Parts Five and Seven

Strebler, M. (2004). Tackling poor performance. Report 406. Brighton: Institute for Employment Studies.

Swaziland Public Service (2016). Annual performance report 2015/2016. Mbabane: Ministry of Public Service.

Swaziland. Auditor General. (2016). Report of the Auditor General for the financial year ended 31st March 2015. Mbabane: Auditor General.

Swaziland. Ministry of Economic Planning and Development (2012). The National Development Strategy. Mbabane: Swaziland Government.

Trebilcock, A. (1998). Labour relations and human resources management: An overview. ILO (Ed.), Encyclopaedia of Occupational Health and Safety (4th Ed.). Geneva: ILO.

Van Bogaert, D. (2006). New legal battlegrounds for performance evaluations.  
Available from <http://myweb.lmu.edu/dbogaert/newlegalbattlegroundspedvb.pdf>

## APPENDIX A: RESEARCH PERMISSION LETTER



06 June 2017

### TO WHOM IT MAY CONCERN

Mr Cebile A Nhlabatsi of Student Number: 201512796 is registered for a Master in Business Administration – Management Strategy at the University of Namibia through the Namibia Business School.

This letter serves to inform you that her research proposal was reviewed and successfully met the University of Namibia requirements.

The student has been granted permission to carry out postgraduate studies research. The University of Namibia has approved the research to be carried out by the student for purposes of fulfilling the requirements of the degree being pursued.

If you have any queries please do not hesitate to contact the Business School at the University of Namibia.

Thank you so much in advance and many regards.

Yours sincerely

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**APPENDIX B: LETTER FOR PARTICIPANT CONSENT**

**STUDY ON FACTORS CONTRIBUTING TO INCREASING AMOUNTS OF  
LABOUR LITIGATION AGAINST THE SWAZILAND GOVERNMENT**

**9 July 2017**

**Dear Sir/Madam**

I, Cebile Amanda Nhlabatsi, a student registered with the Namibia Business School, am undertaking research in partial fulfilment of the Master of Business Administration (Management Strategy) degree at the Namibia Business School in August 2017. Accordingly, I kindly request that you participate in a group interview to discuss what factors are contributing to labour litigation against the Swaziland government, so as to facilitate growth in understanding, and the better management, of the nature of labour litigation. Your positive response and participation is of great importance, and it is much appreciated.

The interview will last about 20 to 45 minutes. Your views will not be published. They will remain anonymous, with only the summary findings of the study being published. Kindly indicate your willingness to participate in the study by signing, and returning, the consent forms enclosed.

Should you have any queries or comments regarding the survey, you are welcome to contact me telephonically at +268 7606 2718, or to email me at [Cebile.nhlabatsi@gmail.com](mailto:Cebile.nhlabatsi@gmail.com).

Yours sincerely

**Cebile Amanda Nhlabatsi**

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**APPENDIX C: FOCUS GROUP INTERVIEW QUESTIONNAIRE**

**The objectives of the study are to:**

- a) explore the factors contributing to labour litigation against the Swaziland government; and**
- b) examine the management practices leading to labour litigation.**

**SECTION A: BACKGROUND INFORMATION**

**A1. How long have you been working in your current position?**

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**A2. Does your current position/office/department participate in the labour litigation resolution process against your employer?**

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**SECTION B: EXPERIENCE**

**B1. Please briefly describe a case in which your ministry or department was litigated against by an employee or employee formation.**

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**B2. In your view, what were the issues of the above-mentioned case?**

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**B3. What was the judgment in the case?**

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**B4. If you were the supervisor at the time of the above case, what were you going to do to prevent your ministry or department from being litigated against?**

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**SECTION C: OPINION**

**C1. In your view, are there any management practices in the Swaziland government that contribute to labour litigation?**

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**C2. What do you think must be done to avoid future labour litigation in your ministry or department?**

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**C3. What measures should be implemented to reduce, or to eradicate, labour litigation against the Swaziland government?**

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**Thank you for your time taken in completing this survey.**

**\*Do you have any questions that you would like to ask me about the study?**