

IN THE HIGH COURT OF SWAZILAND

CRIMINAL TRIAL NO .1234/96

In the matter between:

DUMA JEREMIAH R. MTETWA

VS

SWAZILAND BUILDING SOCIETY

FOR CORAM : J.M. MATSEBULA J

FOR PLAINTIFF : MR. A. SHABANGU

FOR DEFENDANT : ROBINSON BETRAM

JUDGMENT

12/07/96

By summons issued on 22nd May 1996 Plaintiff claimed the following:-

- a) (E1,0480-00) one million four hundred and eighty Emalangeneni being estimated future loss of income;
- b) Interest thereon at the rate of 9% per annum calculated from the date of judgment to date of payment;
- c) Costs of suit.

In his particulars of claim Plaintiff states that he and Defendant had entered into an agreement of employment and that this agreement was partly recorded and partly oral.

He states further that the recording was contained in a

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number of documents one of which is annexure 'A' - whose contents amount to an offer made on behalf of the Defendant.

Annexure 'A' sets out what is referred to therein as terms and conditions - these number 1 to (6).

One of the terms and conditions is item (2) (Probationary period of six months). This is clearly in terms of Section 32(1) of the EMPLOYMENT ACT 1980 which provides - I quote:

"During any period of probationary employment as stipulated either in the form to be given to an employee under Section 22, or on a collective agreement governing his terms and conditions of employment, either party may terminate the contract of employment between them without notice."

The above quoted section should be read with Section 35(1) which sets out people whose services of employment can be terminated without such termination being regarded as being unfairly terminated.

Plaintiff in terms of annexure 'A' is one such person.

On 14th June 1996 Defendant excepted to Plaintiff's particulars of claim as being bad in law and disclosing no cause of action or lacking averments necessary to sustain a cause of action. Defendant then proceeds to set out the

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grounds to support its exception. Inter alia defendant cites Section 35 of the EMPLOYMENT ACT to which have already-made reference.

I can find nothing in annexure 'B' to indicate that Defendant breached or repudiated the employment agreement this was clearly in accordance with the above quoted sections of the EMPLOYMENT ACT.

In the result I uphold the exception and dismiss Plaintiff's claim with costs.

J. M. MATSEBULA

JUDGE