

IN THE INDUSTRIAL COURT OF SWAZILAND HELD AT MBABANE

CASE NO: 68/88

In the matter between;

LUCY MKHOMBE Applicant

vs

SWAZILAND BUILDING SOCIETY Respondent

CORAM: J.A. HASSANALI President

MR DUNSEITH For Applicant

MR R NXUMALO For Respondent

MR MOKGOKONG & MR MATSEBULA Assessors.

AWARD

(Delivered 6th December, 1989)

HASSANALI, P.

In this case the Applicant is claiming from the Respondent a sum of E7514/40 being terminal benefits and compensation for unfair termination.

At the conclusion of the Respondent's case, during final submission, Mr Dunseith representing the Applicant indicated that he would restrict his claims to the following -

Notice Pay	E569.00
Additional Notice Pay	853,20
Severance Allowance	1896.00
Compensation	3414.00
	E6732.20

The Applicant at the relevant times, was one of the machine operators whose job it was to post vouchers originating from the Mortgage Controller, Loan Department Controller or the Bank Hole Controller. She commenced employment under the Respondent Building Society in November 1976.

She was dismissed on 15/4/86 on the ground that she had committed various acts of dishonesty against the Respondent.

Just before her dismissal as a result of a fire breaking out in one of the rooms in the Respondent's building, certain documents and files relating

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to short-term loans were destroyed. The Respondents suspecting foul play, reported the incident to the Police who in the course of their investigation took into custody five officials of the Respondent including the Applicant and one Delisa Masilela. Though the applicant was released after a few days without any charges being proffered against her, she was not taken back to work. She was instead

summarily dismissed by the Respondent in the strong belief that she was involved in the unlawful destruction of the said documents and file, and in the various fraudulent withdrawal of monies.

The Applicant's case depends solely on her evidence, while the Respondent called a number of witnesses including Delisa Masilela and Cornelius Mabuza in support of its case.

In her evidence the applicant flatly denied any involvement either in the destruction of the documents or in the fraudulent withdrawal of any money from the Respondent. She was nevertheless strongly implicated by Delisa as having been an active participant in the entire scheme.

I shall now deal with the evidence of Delisa Masilela whose evidence should be approached with caution in view of her conviction in the Principal Magistrate's Court.

The Court heard how she, the applicant and three others planned and withdrew various sums of money totalling to about E.80000/= from the Swaziland Building Society, using the loan cards belonging to some of its customers. These withdrawals continued from 1981 to 1986 without detection. In 1986 however when the "Five" realised that their dishonest acts were on the verge of discovery and that their jobs would be in jeopardy, they secretly met and decided to burn the the relevant records relating to the short term loans. Towards this end several attempts were made but without much success except on the last occasion when some records were destroyed. Delisa also stated that on one occasion she and the applicant obtained the services of one Cornelius Mabuza but he was not of much help. On the evidence of Delisa it is apparent to me that the applicant played a major role in the destruction of the records. She had on one occasion personally met and obtained muti from one Bhembe, her brother in law Inyanga, whose muti apparently did not cause much damage. Though Bhembe made a

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statement to the Police (Ex. O) he was rather reluctant to incriminate her, in his evidence, presumably because of his relationship to her.

I now turn to the evidence of Cornelius Mabuza, according to him on a certain day, Delisa in the presence of the Applicant asked him whether he could for a reward burn some of the documents found at the Building Society. He agreed to do so and on the next day burned the papers. He admitted that he made a statement to the Police on 28/5/86 which he said was the whole truth (Ex. N). I quote below the relevant extracts from his statement involving the Applicant in his scheme.

- (a) "When we arrived there, Delisa introduced me to Lucie. After a while they requested me to do them a favour; burn certain files at the Swaziland Building Society as they had been fiddling with the short loans of the Bank and certain money was misused by them."
- (b) "On the same day in the afternoon we went to Lucie's place with Delisa to discuss another way of how we can destroy the files as we have failed using the plan of burning the file using petrol."
- (c) "Delisa came to my place to collect me on the same night to Mthethwa's place. We arrived there and also Lusie Mkhombe, Mrs Jabu Masuku, Francis Nkumane and Maria Jele and a certain Myeni arrived."
- (d) "Lucia Mkhombe came to me again to collect me at SCOT as she was on leave. We came to town (Mbabane near to 701) and Lucia went to the Building Society to check if anything had happened in the Bank. She came back to me and told me. that the Muti that they got from the Inyanga in South Africa had worked. She even told me that they would go back to the same
- (d) Inyanga to collect more as there were some other files that were not burnt.'1

Taking Mabuza's evidence, I find that he has sufficiently corroborated the evidence of Delisa in all material aspects involving the applicant in the Unlawful scheme.

Delisa made a favourable impression on the Court as a witness. She gave her evidence with confidence and in a straight forward manner, and appeared very frank when dealing with her own dishonesty. At the end of the cross-examination her evidence remained unshaken except for a few contradictions which in my view were of a minor nature. On the whole she was a reliable witness.

Mabuza was also a credible witness. He was cross-examined at length more especially on his statement but remained unshaken.

Furthermore the evidence of Delisa and Mabuza is supported to some extent by the evidence of Mr Moir the Chief Accountant. He tendered documents Exs. F, G, H, and I and the Court heard how the cards of the customers of the Respondent were used to withdraw money unlawfully. I accept his evidence.

Having considered the evidence in its entirety, I am satisfied that both Delisa and Mabuza spoke the truth and I accept their evidence of the withdrawal of money and subsequent destruction of the records by the Applicant and others. I find that the applicant was one of the prime movers in a dishonest scheme pursuant to which she and four others systematically withdrew sums of cash from their employer over a period of 5 years and thereafter destroyed or attempted to destroy all records connected with their crime. Consequently I hold that the Applicant had been fairly terminated. Her application is dismissed.

My Assessors agree with my decision.

J.A. HASSANALI,

PRESIDENT.