

IN THE INDUSTRIAL COURT OF SWAZILAND HOLDEN AT MBABANE:

CASE NO: 106/89

In the matter between:

ELIJAH SUKATI Applicant

Versus

SWAZILAND MILLING Respondent

C O R A M : J.A. HASSANALI President

MR S. MOTSA For Applicant

MR FLYN For Respondent

MR V. DLAMINI & MR MATSEBULA Assessors.

JUDGEMENT (Delivered on 17th May, 1990)

HASSANALI, P

The Applicant joined the Respondent Company in September, 1985 as a general labourer and worked in that capacity until he was dismissed from service on an allegation that he had stolen 43 rolls of tapes belonging to the Company. The applicant denied this allegation. According to the applicant, on 11/4/88 at about 3.40 p.m. while sitting with four other workers in the compound, he saw Paulos Sihlongonyane, the supervisor picking up a bag and walking towards the office. He was later summoned to the office where Mr Mndawe the Pre Pack Manager accused him of stealing the tapes in the bag. He denied the allegation. Later he was charged by the Police for the same theft in the Swazi National Court, and was acquitted of the charge after trial. In cross-examination he denied that he carried the bag towards the gate and later dropped it when he saw Paulos. He stated that the relationship between him and Paulos was strained.

Paulos Sihlongonyane on the other hand maintained that he saw the applicant carrying the bag towards the gate. When questioned as to what he had in it, he dropped the bag and remained silent. He then opened the bag and found 43 rolls of tapes. He then took the applicant and the bag to Mr Mndawe who questioned him further. He however denied knowledge of the tapes. Paulos

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admitted that the applicant was acquitted at the Swazi National Court. In cross-examination he stated that the other workers who were sitting with the applicant would have noticed him questioning the applicant about the bag.

Joseph Mndawe also gave evidence for the company. He said that on 11/4/88,

Paulos brought the applicant to him with a bag containing 43 rolls of tapes. When he questioned the applicant about the tapes, he denied all knowledge of them. He later questioned Nhleko and one Bhembe the employees of the Company who applicant said were sitting with him when the incident took place. They said that they saw the applicant carrying the bag towards the gate.

In cross-examination he admitted that when he questioned these two workers on 12/4/88, the applicant was not present. He said that there were 5 security guards working for the company; and 4 of them were posted in the compound while the fifth was in the stores.

Mr Flynn representing the Respondent Company argued that at the time the applicant was dismissed the Respondent entertained a reasonable suspicion amounting to a belief that he stole the said 43 rolls of tapes and therefore the Company was justified in dismissing him. He referred Court to Industrial Court Appeal No. 13/88.

The question the Court has to decide is whether the company acted reasonably in coming to the conclusion that the applicant stole the said rolls of tapes. In order to do so, it is necessary to look into the evidence-According to Paulos, he saw the applicant carrying a bag and when he questioned him about it, he dropped the bag and remained silent. He said that this incident was witnessed by four other workmen. Surprisingly none of these workmen was called to give evidence either in the Swazi National Court or in

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this Court. In my view when an employer falls to come forward with any supporting evidence apart from the bare assertion of belief, the Court would be entitled to conclude that his stated reason was not actual reason for dismissal. Therefore the paucity of evidence could cast doubts upon the genuineness of the employers asserted belief.

I now turn to another point where Mndawe, in his evidence mentioned that when he questioned the two workers Nhleko and Bhembe about the incident, they admitted to seeing the applicant carrying a bag towards the gate. But as the questioning was done in the absence of the applicant, I have some doubts as to whether Mndawe made a reasonably diligent investigation to ascertain all the facts in this matter.

Coming to the third point, Mndawe admitted that no proper Inquiry was held before the applicant was dismissed In my view an Inquiry should have been held since the applicant had flatly denied the allegation. Therefore the failure to hold such an enquiry constitutes a violation of the principles of natural justice. In the circumstances I am of the view that the Respondent did not act reasonably when it came to the conclusion that the applicant stole the said rolls of tapes.

Mndawe also mentioned that the tapes were kept in one of the rooms in the stores, which was guarded by a security officer. It is rather surprising that it was possible for the applicant to walk away with the bag of tapes right under the noses of the security guard at the stores and the four others at the compound. Why wasn't he detected by any of them?

Therefore having regard to equity and to the substantial merits of the case, I am of the view that the Respondent did not act reasonably in treating his reason as a sufficient ground for dismissing the applicant. In the circumstances I consider his termination unfair.

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On the question of relief, having considered all the facts in this case, I am of the view that the applicant should be awarded one month's compensation together with the terminal benefits claimed by him, I make the following Order –

The Respondent Company shall pay the applicant the following: -

1 month's wages in lieu of Notice E266.67

4 days additional Notice 49.24

10 days severance allowance 123.10

7 days leave pay 86.17

1 month compensation 266.67

E791.85

This Order is entered as an Award of this Court. My Assessors agree with my decision.

J.A HASSANALI, PRESIDENT