

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO 42/92

In the matter between:

KHANYISILE MAMBA

APPLICANT

AND

WEST STREET SUPERMARKET

1ST RESPONDENT

AND

CHECKERS SUPERMARKET

2ND RESPONDENT

RULING

The Applicant seeks compensation for her unlawful dismissal by the Respondent from her employment.

The Applicant testified that on the 1st May 1989 she was employed by the second Respondent as a packer. In January 1990 she was appointed as a cashier. she approached the second Respondent in Manzini because she had a problem where she was residing. Second Respondent informed her that they had opened solve her problem they were going to transfer her to Mbabane. An arrangement was made for second Respondent to transport her from Nshaleni area to Mbabane each morning. This is how she came to work for the first Respondent.

She was eventually transferred to work for West Street Supermarket as a cashier. She was not given a letter of transfer. The first Respondent did not give her a letter of appointment. On 3rd August she last worked at West Street Supermarket. That evening she went to Labour. She returned to work on 9th September 1991. On her return she was informed by one Salim Mohamed that she had delayed to come back as a result they had employed someone else.

The Applicant would like the court to recomend her reinstatement.
The Applicant would like to be paid her monies namely:

1. Underpayment
2. One months wages
3. 14 days leave pay
4. Additional Notice
5. Severance Allowance
6. Maximamum compensation for unfairdismissal

It will be noticed that when the case come up for continued examination in chief the Applicant said she had a problem with accomodation in Manzini. She spoke with her boss at Manzini checkers Mr Gulam who told her he would talk to his sons who had opened a shop in Mbabane called West Street.

She was transferred to West Street Supermarket in Mbabane. When she arrived at West Street she continued her job as a cashier. Under cross examination the Applicant said she did not tell the Respondent of an leave due. The Applicant conceded that Mr Gulan told her he would talk to his sons and if every thing was alright. She would be taken on. She said it would be fair to assume that if Mr Gulani did not agreed she would not be taken on.

The Applicant was shown exhibit D1 she said she signed the document. She agreed that she worked from 10th June to 3rd August. She worked at west street supermakert for less than a year. The Applicant denied that the Respondent were two different entilies.

The Applicant confirmed that it was about West Street which was registered in 1991. The Applicant was shown another documents and she said this is the company called checkers Supermarket ofz Manzini. She stated that according to the certificate this is the company incorporated called checkers Limited. The Applicant said this is the company called checkers Supermarket of Manzini. The Applicant further stated that checkers Supermakert has been there longer than West Street Supermakert.

Respondent to question from the court the Applicant said she does not know the difference between checkers Limited and Checkers

Supermarket. West Street Supermarket employed her on 10th June 1991. At the close of the Applicant case the Respondents made an application that the Applicant has not made out a case to put the Respondents have submitted that there is incontrovertible evidence that at Mbabane the Applicant was working for West Street Supermarket. The Respondent have Submitted that there is incontrovertible evidence that at Mbabane the Applicant was working for west street supermarkry.

The Respondents have submitted that it is incumbent on the Applicant to prove an evidence that she was employed by the first Respondent.

The Applicant was employed by checkers supermarket is a company called checkers limited. It was submitted on behalf of the Respondent that during May 1989 the Applicant during May 1989 the ~~Apployed~~ was employed by the second Respondent. Respondent further submitted that the Applicant sought to bring evidence that she was transferred from second Respondent to first Respondent. It is the Respondents submission that a contract of employment cannot be ceded to a third party without consent be said that the Applicant was transferred from second Respondent to first Respondent. That it is assumed that on taking up new employment Applicant took up a new contract of employment.

It was further submitted that two parties can enter into a contract on behalf of a company which has not yet been formed. By letting the Applicant continue in the employment of the first Respondent it must be assumed that the first Respondent accepted the contract. It was further submitted that there is nothing in evidence that the Applicant was responsible to receive and issue money. That it is incumbent on the Applicant to prove that she fell into definition on a cashier.

It is the Respondents case that the Applicant is not entitled to notice. That she was on probation. She has made no case against the first Respondent.

That the Applicant does not claim to have been working for the second Respondent. That the second Respondent should not have been a party.

It will be recalled that on the 26th August 1992 this court ordered the Applicant to secure a complete representative and adjourned this case to the 22nd October 1992. On the 22nd October 1992 the Applicant came with the same representative that had been representing her on the 26th August 1992. It is conceded that in law the Applicant may be represented by any person authorised by the Applicant. When the Applicant returned with the same representative we decided to respect her choice of the person she had authorised to represent her.

The submissions we are faced with are matters of law.

The Applicant in reply submitted that the Respondents have failed to give evidence. That there is no evidence before court that the Respondents never employed the Applicant. It is the Applicant contention that she was not on probation. That she was employed in 1989 by the second Respondent then transferred to the first Respondent. It is the Applicant's case that the court has a duty to correct the injustice by having the Respondents reinstate the Applicant.

The Respondent repeated its position and submitted that there is no failure to produce evidence. That thus is an application for absolution. That the Applicant entered into a new contract with the first respondent in June 1991. That no case has been made out. It is the Respondents case that the Respondents should be put on their defence as it is out clear if they have been sued jointly. That it is not for the court to make out a case for the Applicant. That the court should make a ruling on the evidence before it. That if absolution be refused the court should order Respondent to be put on their defence.

The Respondents through their counsel conceded that by and large the evidence of the Applicant was true. The Respondents say there is incontrovertible evidence that at Mbabane the Applicant worked for the West Street Supermarket. In the same breadth.

The Respondents are saying the Applicant has not made out a case. That it is incumbent on her to prove on evidence that she was employed by the first Respondent The Respondents are referring to West Street Supermakert. The Respondents submitted that by letting the Applicant continue in the employment of the first Respondent it must be and it is not disputed by the Respondents. The answer is that the Applicant at the time her services were terminated was employed by the first Respondent West Street Supermakert of Mbabane. That prior to her employment by West Street Supermarkert the Applicant had been employed by the second Respondent namely cherckers Supermarkert incorporated as checkers Limited.

For the purposes of this trial. The Applicant has made out a case. The Respondents are put on their defence. The Application for absolution is refused.

MARTIN SAMSON BANDA

PRESIDENT OF THE INDUSTRIAL COURT