IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 39/94 In the matter between: SIMON MKHABELA APPLICANT And ANDREW BROWN T/A BROWN'S MOTORS RESPONDENT CORAM: NDERI NDUMA : PRESIDENT JOSIAH YENDE : MEMBER NICHOLAS MANANA : MEMBER FOR THE APPLICANT : MR. S. MOTSA FOR THE RESPONDENT : NO APPEARANCE

JUDGEMENT

The Applicant seeks judgement against the Respondent for Notice Pay, 8 days Additional Notice, Severance Allowance, Leave Pay and maximum compensation for unfair dismissal.

The Respondent has filed a reply to the Applicant's application but failed to appear for the trial inspite of the fact that the matter was postponed severally to notify him to attend.

The Applicant testified under oath and told this Court that he was employed by the Respondent on the 15th June, 1989 as a Security Guard at his business premises which also doubled up as a homestead for the Respondent. He was earning 330.00 Emalangeni per month and usually was on duty at night.

It was his further testimony that on the night of 3rd September 11 duty, he was assaulted by the son of the Respondent who he knew by the NNY. That, after this assault he was summarily dismissed and no terminal re paid to him. He was warned by MR. KENNY that should he ever come babing to get killed.

The Applicant had been in continuous employment by the Re rom 1st June 1989 to the date of dismissal.

The Applicant testified further that on the 4th September 19 sorted the assault at Simunye Police Station who gave him a form. He then prodimunye hospital where he was treated for bruises. Although the doctors report produced in Court, we find the evidence of the Applicant credible and have no brought that he was assaulted on the night of the 3rd September 1991.

On the 4th September 1991, the Applicant reported this dise Labour Commissioner and a conciliation meeting was held at the premises Respondent. The Applicant testified that the Respondent supported the assault and by hi son by asking "so what if he assaulted you?". We find this conduct of the dent most reprehensible and in the absence of his own version to the cake it as representative of what happened that day.

The Applicant has established that he was indeed assault unlawfully dismissed by the Respondent. He testified he was now thirty years oad found a temporary job elsewhere, He had served the Respondent for two years consider also the humilation he suffered at the hands of the Respondent.

Taking all t cumstances into account we order that he be paid 12 months wages by way of caution in the sum of E3 960 and in addition the Respondent will pay the following benefits:

One month's Notice Pay E330.00

8 days Additional Notice E101.52

24 days leave pay E304.56

The Members have concurred.

NDERI NDUMA PRESIDENT -

INDUSTRIAL COURT