

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 33/96

In the matter between:

THOBISA TSABEDZE

APPLICANT

and

NATIONAL AGRICULTURAL MARKETING BOARD

RESPONDENT

R U L I N G

The Respondent in this matter has raised a point in Limine namely that the Applicant does not disclose a cause of action as there is no allegation that she was dismissed from her employment by the Respondent.

The Applicant then moved an application after seeing the point raised in Limine by the Respondent seeking to amend her papers. This application was opposed by the Respondent on the ground that it is not clear what paragraphs the Applicant seeks to have amended and that she has introduced new issues that were not in the original application and that this would necessitate a response from the Respondent.

The Applicant concedes that her original application was scanty inadequate and that this is why she is moving this application for amendment. The Respondent on its part submitted that giving this matter a trial date would raise problems as the papers of the Applicant are meaningless.

We have looked at the Applicant's original papers and noted that they assert that the Applicant was an employee of the Respondent having been so employed on the 3rd June, 1989 as a Statistical Clerk. It is then alleged that the termination

2

of her services was unfair and unlawful in terms of the Employment Act of 1980 and as such unreasonable as the principle Last in First Out could have been applied. There is no effort made to establish the facts or circumstances leading to the alleged termination of employment, the reason for termination is not shown, the unreasonableness of such reason is not reflected or pleaded but a conclusion is drawn without laying the necessary foundation of allegations that will support the conclusion that having established the facts it would be unreasonable to arrive at the conclusion that is now being taken in issue as being unreasonable unfair and unlawful.

The Applicant in her proposed amendment sets out the necessary ingredient that she was an employee of the Respondent having been so appointed as an employee in July, 1989 as a Statistical Clerk. She then goes to show that on the 28th July, 1995 such appointment was terminated under the guise of retrenchment and that a fair and objective criteria was not applied making such retrenchment in breach of the Employment Act of 1980 as no notice was given and that such termination was malafide in that there was an alternative post available. That for these reasons the termination of her services was unlawful, unfair and unreasonable.

Would it be proper for the Respondent faced with such averments to state that no cause of action has been established, Or is the Applicant precluded from amending her papers because the Respondent has raised a point of law with regard to her original papers. We would like to state that a party is at

liberty to amend his or her papers at any stage of the proceedings with the exception when judgement has been delivered.

Will it prejudice the Respondent's interests if an order is granted allowing such amendment. The Respondent says the Applicant is raising new issues. As we see it the Applicant

3

is at liberty to raise new issues in her proposed amendments. The only restriction is that whatever relief she seeks must have the blessing of the Certificate of Unresolved Dispute. That is the causes of action or issues she wishes to raise in dispute must be ones on which report was made to the Labour Commissioner and conciliation conducted thereon. There will be no prejudice that will befall the Respondent if an order of amendment is granted. The Respondent will be at liberty if it so wishes to amend its reply to meet the issues raised in the amended application.

Speaking for ourselves the Applicant has disclosed a cause of action has established the basis upon which she feels the termination of her employment by the Respondent was unfair, unlawful and unreasonable. We shall allow the application and grant the Applicant leave to amend her papers. The Respondent is also granted leave to amend its reply if it so wishes. The point raised in Limine is hereby dismissed.

MARTIN SAMSON BANDA

PRESIDENT - INDUSTRIAL COURT