

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 293/99

In the matter between:

MARTHA MHLANGA

1ST APPLICANT

SWAZILAND COMMERCIAL AND

ALLIED WORKERS UNION

2ND APPLICANT

and

RELYANT RETAIL LIMITED

t/a FAIRDEAL FURNISHERS

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

ANDREAS NKAMBULE:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. S. MOTSA:

FOR APPLICANT

MR. M. SIBANDZE:

FOR RESPONDENT

RULING

8/9/00

The applicant in this application seeks an order for re-instatement to the position of stock clerk.

The brief history of the matter is that respondent was appointed stock clerk in February 1995. In March 1999 respondent allegedly demoted the applicant to the position of debtors clerk, a position under respondent's credit management.

According to applicant she considers this position as inferior to the position she held since 1995. She told the court that as stock clerk she would act as manager in the absence of the manager.

Through cross examination respondent has established that it is not true that applicant used to act as manager in the absence of the manager but that when the manager was away for a day or for some hours he would give instructions to the

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applicant to do certain things for example he would ask the applicant to extract figures for onward transmission to Head office. When the manager would be away for some time a replacement would be sought and at no instance was applicant appointed to act in such capacity.

In his replying documents respondent states that as the company had undergone restructuring some positions were abolished. The position of stock clerk is one of such positions, A new position of customer service consultant was created. This according to respondent was the position occupied by applicant.

This would enable applicant to be multi skilled as she would do quite a variety of jobs rather than concentrating on stock clerkship only.

Further, respondent contends that it never tempered with applicant's salary. The transfer to this department meant that applicant moved with her existing rights. This was confirmed by applicant that her salary remained the same. Her major concern was that the position she now occupies is less prestigious than her previous position as stock clerk.

At the close of applicant's case Mr. Sibandze for respondent made an application for absolution from the instance. He based his application on grounds that applicant has failed to satisfy the provisions of Section 26 and 27 of the Employment Act 1980. Mr. Sibandze told the court that applicant has not shown that her present position as debtors clerk has less favourable conditions than her previous position as stock clerk.

He further pointed out that the facts before court do not amount to a demotion but to a cross-transfer. He contends that in order for the application to be successful applicant was supposed to show major disruption in her life. For example the application would succeed if applicant was transferred from her present place of employment to Nhlngano or Siteki. But in this case she was merely moved from one office to another in the same building.

The legal basis in which the court would interfere with the movement of employees in an organisation would be in terms of Section 26 and 27 of the Employment Act 1980.

Our finding of fact is that the position occupied by applicant as stock clerk is similar in all respect to the position of debtors clerk - she is now holding. Her salary remains the same. She has not been asked to move to another city. She has moved within the same building from one office to another.

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Regarding the application that has been made by respondent our law stands as follows: After the close of the applicants case, the question which arises for the consideration of the court is ; IS THERE EVIDENCE UPON WHICH A REASONABLE MAN MIGHT FIND FOR THE APPLICANT -? The question therefore is, at the close of the case for applicant was there a prima facie case against the respondent See the case of GASCOYN VS PAUL & HUNTER 1217 = PD170. See also LYMINGTON ESTATES LTD V MURPHY 1949 (1) SA 564.

The question therefore is : Looking at the totality of the evidence before court can a reasonable man find for applicant? In short can it be said applicant has discharged the burden i.e. Has applicant made a prima facie case?

Our shared opinion is that the transfer from the position of stock clerk to that of debtors clerk has not resulted in less favourable terms and conditions of employment than those previously enjoyed by her. Therefore, applicant has failed to establish a prima facie case against respondent.

The applicant for absolution from the instance therefore succeeds. No order as to costs. Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)