

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 87/98

In the matter between:

ABRAHAM DLAMINI

APPLICANT

and

VUVULANE FARMERS ASSOCIATION

RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR THE APPLICANT:

MR. MZAMO NXUMALO

FOR THE RESPONDENT:

NO APPEARANCE

JUDGEMENT

12.09.2000

The Applicant claims maximum compensation for unfair dismissal in that the Respondent dismissed him without a just cause, notice nor a hearing hence the dismissal was unfair both procedurally and substantively.

The facts of the Applicant's case are that he was employed on the 10th April, 1995 as an operations field manager at a monthly salary of E2,500.00. He remained in continuous employ of the Respondent for a period of eight (8) months until he was dismissed on the 4th December 1996.

The allegations against the Applicant were that he misused the Respondent's motor vehicle, he grew crops on his own fields and in doing so, unlawfully used the Respondent's employees to work in his fields.

On the 29th November 1996 the Applicant appeared before a disciplinary committee chaired by Bhekwa Dlamini the supermarket manager. He pleaded not guilty to the charges against him. The proceedings were postponed until the 4th December 1996 when he appeared before a panel chaired by the Managing Director and was attended by the Board of Directors.

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Similar charges were read to him. The prosecutor was Mr. Mathonsi. No evidence was led against the Applicant. He was called upon to ask questions. He asked if Mathonsi was the prosecutor and judge and in response he was ordered out of the meeting and recalled back at 11.0'clock.

He was handed a letter of summary dismissal wherein no reason was given for the decision. He was paid his terminal benefits and thus only claims compensation for unfair dismissal.

He reported the dispute to the Labour Commissioner, the matter was not resolved and a certificate of unresolved dispute was issued.

The Applicant got another job in January 1999. He was now 41 years old and had four minor children. During the period he was unemployed the children went out of school and his furniture was repossessed for non payment.

He believes that the charges against him were a fabrication.

The Respondent Association was duly served with the application on the 5th May, 1999 and a return of service was duly filed in court.

No replying papers were filed on behalf of the Respondent nor was there an attendance on its behalf during the trial.

The hearing of the matter proceeded ex parte in the circumstances.

In terms of Section 42 (2) (a) and (b) of the Employment Act the onus is on the Respondent to show on a balance of probabilities that the dismissal of the Applicant was for a reason provided for under Section 36 of the Employment Act and taking into consideration all the circumstances of the case, it was fair and reasonable to dismiss the Applicant.

The Respondent has failed to discharge this onus and since the Applicant has established that he was an employee to whom Section 35 applied, his dismissal was both procedurally and substantively unfair.

Considering his personal circumstances outlined herein, we award him seven (7) months compensation for unfair dismissal in the sum of (2,500 x 7) E1 7,500.00 (Seventeen Thousand Five Hundred Emalangeneni).

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The Respondent will pay costs of the Application in terms of the Industrial Act 2000. The members agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT