IN THE INDUSTRIAL COURT OF SWAZILAND

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| HELD AT MBABANE | CASE NO: 221/99 |
| In the matter between: | |
| BUYISIZWE V. VILAKATI | APPLICANT |
| and | |
| SWAZILAND BUILDING SOCIETY | RESPONDENT |
| CORAM: | |
| NDERI NDUMA: | PRESIDENT |
| JOSIAH YENDE: | MEMBER |
| NICHOLAS MANANA: | MEMBER |
| FOR THE APPLICANT: | MR. B. ZWANE |
| FOR THE RESPONDENT: | MR. Z. JELE |

RULING

26.10.2000

Applicant was dismissed from his employment on allegations of dishonesty in that he had falsified a document to induce the Respondent to grant him leave from duty to attend a Royal function.

He appealed the decision to dismiss him, which appeal was dismissed, but upon consideration of the mitigating factors, the Managing Director Mr. N. R. Caplen offered the Applicant re-employment on the 16th September 1997 subject to a probationary period of three months.

The Applicant signed the offer of re-engagement on the 23rd September 1997 accepting to commence work on the 29th September, 1997.

On the 23rd December 1997 the services of the Applicant were terminated by the Respondent for a second time and for purely different reasons.

The Applicant has since brought this Application claiming re-instatement and or compensation for unfair dismissal on the 25th August 1997 notwithstanding the purported settlement of the dispute that had culminated in his re-engagement.



The Applicant alleges that the purported settlement was a sham and a farce disguised to clothe the subsequent intended termination with a semblance of legality. In any event, the Applicant argues that the re-engagement was not in itself a full and final compromise of his right to sue for the unfair dismissal as the agreement did not explicitly state so.

A reading of the letter of re-engagement dated the 16th September, 1997 shows that there were no conditions whatsoever placed on the Applicant to precede the acceptance of the offer of re-engagement.

There is no indication at all flora the document that the re-engagement extinguished any rights of the Applicant as regards to his earlier employment and termination. If that was the intention of the Managing Director of the Respondent, he should have stated so in a clear and unequivocal language as to leave the Applicant with no doubt of the contract he was entering into.

In the circumstances, we cannot read any such intention into this document.

As regards the second termination on the 23rd December 1997 we note that the contract of employment was concluded on the 23rd September, 1997.

The Applicant was consequently re-engaged from the 23rd September, 1997 and at the time of his second termination on the 23rd December, 1997 it had lasted exactly three (3) months. The Applicant had simply advised that he would commence work on the 29th September 1997 but his contract of employment was already in place as of the 23rd September, 1997.

It cannot be argued therefore that he was not an employee to whom Section 35 applied upon a reading of this document. For the aforesaid reasons, the point in limine has failed.

There will be no order as to costs.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT