

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 201/2003

In the matter between;

FORWARD DLAMINI APPLICANT

And

K T M BAKERY (PTY) LTD RESPONDENT

CORAM:

NDERI NDUMA : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMBER

FOR APPLICANT : D. MSIBI

FOR RESPONDENT : S. ZWANE

JUDGEMENT - 3/12/04

The Applicant is a male adult of Manzini Region and the Respondent is KTM bakery (Pty) Ltd a company duly registered in terms of the Laws of Swaziland.

On or about the 1st October 1998, the Applicant was employed by the Respondent. It is in contention whether he was employed as a packer/loader or as a cleaner. He himself alleging the former whereas the Respondent alleges the latter.

1

He worked continuously until the 22nd June 1999, when his services were terminated via a letter annexed to the application and marked 'FD1'.

Upon termination he was paid terminal benefits due to him in consideration of the period he had served the Respondent.

The application is only in respect of compensation for unfair dismissal. At the time of the dismissal he earned E670.71 per month.

In his testimony, the Applicant told the court that his work was to pack bread into plastics and load it in motor vehicles of the company.

In the month of May 1999 however, he was asked to accompany the driver of a supplies truck to collect money received from bread customers.

Upon his return after a day's work, he was informed that he had a shortage of Eighty One Emalangeni (E81.00). The Applicant acknowledged that having regard to the invoices for the day, he had incurred the shortage but was unaware how the same had occurred.

When he received his June salary on 22nd June 1999, he alleges the Eighty One Emalangeni (E81.00) was deducted from his salary.

He added that his services were then terminated without notice and he left the employment on the

same day. He refuted the contents of TD1' to the effect that he had served one month's notice upon receipt of the termination letter.

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

2

He told the court that inspite of his efforts to get alternative work, he had failed. That he survived on piece jobs. That he got no letter of reference from the Respondent hence the difficulty to clinch a new job.

He explained that he was 26 years old. That he was married and had two children dependent on him. That they suffered loss of dependency due to his joblessness upon dismissal. That he had lost means of subsistence as a result of the dismissal.

He claims compensation for unfair dismissal accordingly, in terms of the Industrial Relations Act, No. 1 of 2000.

In terms of Section 35 (2) of the Employment Act 'No employer shall terminate the services of an employee unfairly'.

Section 36 goes on to stipulate reasons a -j for which an employee may be dismissed fairly. Furthermore, and in terms of Section 41 (1):

"In the presentation of any complaint under this part, the employee shall be required to prove that at the time his services were terminated, that he was an employee to whom Section 35 applied".

The Applicant herein has established that he does not fall under any of the category of employees enumerated under Section 35 (1) to whom Section 35 (2) does not apply by showing that he was in continuous employment of the Respondent October 1988 to 22nd June 1999 a period of approximately nine (9) months.

3

Part V of the Act titled " Termination of Contracts of Employment" therefore applied to him.

Accordingly in terms of Section 42 (2) his services "shall not be considered as having been fairly terminated unless the employer proves:

- (a) that the reason for the termination was one permitted by Section 36; and
- (b) that taking into account all the circumstances of the case, it was reasonable to terminate the services of the employee.

In the endeavour to discharge this onus, the Respondent called one Euraph Rashid, a manager of the Respondent at the Manzini branch. He told the court that contrary to the allegations by the Applicant that he was employed as a packer on the 1st October 1998, he was infact employed as a cleaner on the 1st October 1998.

That the Applicant and his brother were recommended for employment by their brother who is a Labour Officer at Manzini Office by the name of Sifiso Thwala. That the two were employed at the same time but the brother left the employ of the Respondent only after three (3) months because he was a problematic employee.

That the two brothers would normally misbehave and when challenged would threaten to report the Respondent to their brother who worked at the Labour Office.

4

According to this witness, the Applicant worked for seven months as a cleaner and then he was made a packer. He had a bad attitude and always quarreled with his supervisors. He would refuse to perform certain duties assigned to him like loading of bread. Whenever this witness spoke to him, he would say that there was nothing that could be done to him because the Respondent knew who had brought him to work.

In April 1999, one of the assistant drivers for the Mbabane route was sick, and the Applicant and another employee approached the witness for the position. He gave both of them a chance to prove their capabilities. On the 12th May, the Applicant accompanied the driver to deliver bread, upon return, he had a shortage of One Hundred and Nine Emalangeneni (E109.00).

He was asked to explain the shortfall. He was unable to give a satisfactory answer and at the end of the month he refused to pay for the shortfall. The witness stopped him from collecting money.

On the 9th June 1999 another supervisor gave him another chance to collect the money but when the truck returned he had a short fall of Emalangeneni Thirty One (E31.00).

On the 16th June 1999, he had a further shortage of Ten Emalangeneni (E10.00) and this witness completely stopped him from acting as assistant to the driver. He refused to pay the shortage and threatened to report the matter to his brother.

The witness reported this to the Director of the company who in turn called the Applicant to find out how he had lost the money. He told the Director that he would report him to his brother at the Labour Office.

5

On the 22nd June 1999 the Director gave him the letter of dismissal upon serving one month's notice. He served notice up to the 22nd July 1999 and was paid his salary and left.

It was thereafter that the Respondent received an invitation to attend a conciliation meeting at the Labour Office.

After the meeting, the Applicant was paid in lieu of leave days not taken, notice pay, though he had served notice and underpayments he had claimed.

Thereafter the Respondent received summons to court.

The witness emphasized that the Applicant acted like a spoilt brat and always threatened his supervisors that he would report them to his brother whenever an effort to correct his conduct was made. He said that the Labour Officer was a friend of the Director of the Company named Musa, hence the employment of the Applicant and his brother.

The Applicant was insubordinate and had continued to lose company money whenever he accompanied the truck driver to sell bread. The truck had a drop-safe and thus he was unable to explain the losses.

He was justifiably dismissed because he was unrepentant but arrogantly threatened his employer that he would ask his brother, the Labour Officer to intervene.

The Respondent on a balance of probabilities has established that the Applicant was dismissed for misconduct permitted by Section 36 of the Act.

6

That it was no longer reasonable for the employer to continue to employ him. In the circumstances it was fair and reasonable to dismiss him.

The application is dismissed. No order as to costs. The members agree.

NDERI NDUMA

JUDGE PRESIDENT
INDUSTRIAL COURT