

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 341/2000

In the matter between:

SALEBONA SIMELANE

APPLICANT

and

DUMISA SUGAR CORPORATION

RESPONDENT

CORAM:

NDERI NDUMA : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMEBR

M/S KANYISILE MSIBI : FOR APPLICANT

J U D G E M E N T - 15/12/05

The Applicant was employed by the Respondent in April 1993. He was in continuous employment until the 30th April 2000 when he was verbally dismissed by the Respondent. At the time of dismissal, he worked as a driver, earning a salary of E1680.00

The alleged reason for the termination was disobedience of orders of his employer.

The applicant denies he defied any orders of the employer or at all. The termination was summary, without any terminal benefits. The Applicant reported a dispute to the Commissioner of Labour.

Conciliation efforts failed to resolve the dispute. The application was then filed in court on 9/01/2001.

The same was served on the Respondent on 15th/2/01. In terms of the Return of service it was received by One Musa Simelane a motor mechanic at the Respondent's office and workshop. Mr. Dumisa Shongwe the Manager of the Workshop was not present at the Workshop when service was done. The service was done by Acting Deputy Sheriff for Lubombo District Mr. Sipho Shabangu.

Inspite of the service the Respondent did not file any reply to the application nor did the Directors of the Company or their representative appear before court.

The Attorneys of Record for the Applicant Maphalala and Associates appear to have taken very little effort to have this matter heard and determined between the year 2001 to date inspite that the matter was not opposed.

In the meantime the Respondent company has been liquidated to the prejudice and loss of the Applicant if he is unable to recover the decretal amount herein.

No proof of the liquidation was produced in court, hence our decision to proceed with the matter.

The onus of establishing that the applicant was dismissed for a reason permitted by section 36 of the Employment Act No.5 of 1980 lies with the Respondent. By its default, the Respondent has failed to discharge the onus. The further burden of the Respondent was to show that the dismissal was fair and reasonable in the circumstances of the case. It has also failed in this regard.

The application therefore succeeds on the merits.

As regards compensation, the Applicant worked for the Respondent continuously for about 7 years. He was unlawfully and unfairly dismissed. He was an old man born in 1936 and was unable to obtain alternative employment. He still had one minor child to take care of at the time the matter was heard.

He has suffered loss of earnings resulting in hardship. Accordingly, the

court awards him 12 months salary as compensation for the unfair dismissal in the sum of 1680 x 12 = E20,160

Further the Respondent is to pay terminal benefits as follows:-

Severance pay	
E3,877.30	
Additional Allowance	
1,550.88	
Notice	pay
1,680.00	
Payment	in lieu of Leave
<u>4,200.00</u>	
TOTAL	<u>E31,468.18</u>

The Respondent is to pay costs of the suit.

The members agree.

N. NDUMA
JUDGE PRESIDENT - INDUSTRIAL COURT