

**IN THE INDUSTRIAL COURT OF SWAZILAND**

HELD AT MBABANE

In the matter between:

CASE NO. 268/2000

**KENNETH THEMBA MAMBA            APPLICANT**

and

**A. A. INVESTMENTS (PTY) LTD    RESPONDENT**

**CORAM:**

NDERI NDUMA: PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

FOR APPLICANT: P. R. DUNSEITH

FOR RESPONDENT

**J U D G E M E N T - 06/07/05**

The Applicant was employed by the Respondent as a Commercial Manager on the 16<sup>th</sup> September 1994. He worked continuously for the Respondent until the 21<sup>st</sup> July 1999 when his services were terminated by a letter annexed to the application and marked "KTM1".

In terms of the letter of termination, the Applicant was informed that the Respondent was not generating any income at the time and was advised that his position had become redundant.

The letter was written by one of the Directors of the company Mr. Lindifa Mamba who is also the attorney on record for the Respondent in this matter.

At the time of the termination, the Applicant earned Five Thousand Emalangi (E5,000) per month.

Upon the termination, he was still owed by the Respondent salary for the months of May, June, July up to and including the 18<sup>th</sup> August 1999 in the sum of Nineteen Thousand Five Hundred Emalangi (E19,500).

He was not paid any terminal benefits upon dismissal, itemized as notice pay E5,000.00 (Five Thousand Emalangi), additional notice E4,900.00 (Four Thousand Nine Hundred Emalangi) and severance allowance in the sum of E12,250.00 (Twelve Thousand Two Hundred and Fifty Emalangi).

The Applicant claims payment of all the aforesaid items.

In addition, the Applicant was owed 65 days leave and was not paid money in lieu of the same. He therefore claims E16,250.00 (Sixteen Thousand Two Hundred and Fifty Emalangi) in respect thereof.

Upon filing the particulars of claim on the 26<sup>th</sup> September 2000, a Notice of Intention to Oppose the application was filed by the firm of Shilubane Ntiwane & Partners on the 5<sup>th</sup> October 2000.

The firm of Mamba & Associates later on took over the matter.

Mr. Mamba without pleading on the merits, raised points in limine against the Application. The matter was argued on the objections, and a ruling delivered by Justice Kenneth Nkambule on the 3<sup>rd</sup> August 2001 dismissing the points.

Leave was not sought and non-was granted to plead over the merits belatedly upon dismissal of the points.

The court was told however that the Applicant's attorney tried to prevail on Attorney Mamba to file a reply to the application. This did not happen inspite that the matter was set down on at least seven occasions wherein Attorney Mamba requested for and was granted post-ponement to file the reply.

Mr. Mamba finally filed a Notice of Withdrawal from the matter. On the face of the notice, there is no indication whether same was served on the Respondent.

Mr. Dunseith however wrote to Mr. Mamba requiring proof of service of the Notice of Withdrawal. Mr. Mamba did not respond to the same.

The matter was set down for hearing and the Notice was nonetheless served on the office of Mamba and Associates, the firm he now operated under.

The notice was also sent by registered post to the registered office of the Respondent as appeared from the court papers.

When the matter came for hearing on the 10<sup>th</sup> June 2005, neither Mr. mamba who is also a Director of the Respondent, nor any other representative of the Respondent made an appearance.

An application to hear the matter ex-parte was made by Mr. Dunseith for the Applicant and the same was granted by the court.

The matter proceeded to an exparte hearing. All the particulars of claim remain uncontroveretd therefore. The Applicant made a brief testimony in support of the claim.

The court is satisfied that all the Applicant's claims as contained in the Particulars were proven on a balance of probabilities. His testimony was credible and remains uncontrovereted. It is important to note that no claim for compensation for the unfair dismissal was made in the Particulars of Claim nor does this claim appear on the report in terms of Section 41 of the Employment Act. The court will therefore not consider same.

Accordingly the Application is granted and the following order made:

The Respondent is to pay to the Applicant:

1. Notice pay E 5,000.00
2. Additional Notice E 4,900.00

3.	Severance Allowance	E12,250.00
4.	Arrear salary	E19,500.00
5.	Payment in lieu of leave days	E16, 250.00

**TOTAL** **E57,900.00**

Due to the dilatory tactics employed by the Respondent, the hearing of the application was considerably delayed and the Applicant was put to unnecessary expense. Therefore the Respondent is to pay the costs of the application.

The members agree.

NDERI NDUMA

JUDGE PRESIDENT-INDUSTRIAL COURT