

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 150/08

In the matter between:

SICELO LANGWENYA

APPLICANT

And

**SWAZILAND UNITED BAKERIES
(PTY) LTD**

RESPONDENT

CORAM;

NKOSINATHINKONYANE: JUDGE

DAN MANGO: MEMBER

GILBERT NDZINISA: MEMBER

FOR APPLICANT: N.G. DLAMINI

FOR RESPONDENT: N. J. HLOPHE

JUDGEMENT 11.07.08

[1] This is an application brought by the applicant against the respondent for an order;

"1. Directing respondent to pay over to the applicant the sum of E22 767.40 (Twenty two thousand seven hundred and sixty seven Emalangeni forty cents) with interests at 9% pr annum a tempore morae;

2. Costs of the application if it be opposed;

3. Further and/or alternative relief."

[2] The application is opposed by the respondent.

[3] The facts show that the applicant is a former employee of the respondent. He was employed on 01.07.03 and has retired on 30.04.07 on medical grounds. His retirement package of E96,195:60 was paid to him through the respondent's bank account. The respondent then withdrew a sum of E22,767:40 from this amount. The respondent avers that this amount represents money lent to the applicant and which the applicant authorized the respondent to recover from his pension benefits.

[4] The applicant denies any indebtedness to the respondent.

[5] The court is unable to resolve this dispute of fact on the papers. In the circumstances the court has two options, to dismiss the application with costs if it is of the view that the applicant ought to have foreseen the dispute of fact arising, or order that oral evidence be led to resolve the dispute of fact. The court has a discretion which it must exercise judiciously in the interest of justice.

[6] Taking into account all the above factors and all the circumstances of the case, the court will make the following order;

1. That the matter is referred to oral evidence to resolve the dispute of fact whether the applicant did authorize the deduction or not.

2. The date of trial is to be set in court after the delivery of this judgement.

3. There is no order for costs.

The members agree.

**NKOSINATHI NKONYANE
JUDGE - INDUSTRIAL COURT**