



IN THE INDUSTRIAL COURT OF SWAZILAND

JUDGMENT

Case NO. 131/09

In the matter between:

PATRICK NXUMALO

Applicant

And

**N W ENTERPRISES (PTY) LTD
T/A BUTTERFIELD BAKERY**

Respondent

Neutral citation: *Patrick Nxumalo v N W Enterprises (Pty) Ltd T/A Butterfield Bakery (131/09) [2014] SZIC 04 (February 2014)*

Coram: NKONYANE J,
*(Sitting with G. Ndzinisa & S. Mvubu
Nominated Members of the Court)*

Heard submissions : **06 FEBRUARY 2014**

Judgment delivered: **12 FEBRUARY 2014**

Summary:

The Applicant instituted proceedings for the determination of an unresolved dispute against the Respondent. After the close of pleadings the Respondent's representative filed a Notice of Withdrawal. The Respondent failed to appoint a new representative. The Applicant accordingly applied to court to proceed with the matter on the basis that it was no longer being opposed by the Respondent.

Held—there being evidence that the Respondent was duly served with the Notice of Withdrawal, the court allowed the Applicant to proceed with the matter on the basis that it was no longer opposed by the Respondent. After hearing the undisputed evidence of the Applicant, an order was granted in favour of the Applicant in terms of the Notice of Application.

**JUDGMENT
12.02.2014**

- [1] This is an unopposed application for determination of an unresolved dispute brought by the Applicant against the Respondent.
- [2] The Applicant is an adult Swazi male of Mbabane, Hhohho District and a former employee of the Respondent.

- [3] The Respondent is a local company duly incorporated in terms of laws of this country having its principal place of business in Matsapha in the Manzini District.
- [4] After the pleadings were closed, the Respondent's representative filed a Notice of withdrawal. The Notice was duly served on the Respondent. The Respondent however failed to appoint another representative. On two occasions being 25.09.13 and 11.10.13 there was no appearance for the Respondent. The Applicant's attorney on 11.10.13 urged the court to deal with the matter as unopposed and to hear the Applicant. The court being satisfied that the Respondent was duly served with the Notice of withdrawal, granted the application.
- [5] The Applicant in his evidence told the court that he was employed by the Respondent in March 2003 as a Baker. He said he earned E990.00 per month. He was in continuous employment until 02nd February 2007 when he was dismissed by the Respondent. He said his dismissal was both procedurally and substantially unfair in that he was not charged with any offence but was called to the office by Mr. Bennett and Vincent and allegations of dishonesty were levelled against him. The Applicant said he was accused of not reporting someone who had committed a crime. The Applicant said he did not know that that employee was involved in criminal

- activities at the workplace. He said after the allegations of dishonesty were levelled against him he was told to vacate the company premises. He did so, and that was his last day at the Respondent's place.
- [6] The Applicant reported the matter to the Conciliation, Mediation and Arbitration Commission (CMAC) as a dispute. The dispute could not be resolved and a certificate of unresolved dispute was duly issued. The certificate of unresolved dispute is annexed to the Applicant's application and is marked "PN1".
- [7] The Applicant is claiming payment of Notice pay E960.00, Additional Notice pay E320.00, Severance allowance E800.00 and Compensation for the unfair dismissal (calculated at 24 months) E23,000.00.
- [8] The Applicant in his evidence before the court stated that he earned a salary of E990.00 per month. In his papers he stated that he earned E960.00.00 per month. There was no application made in court however, to amend the papers. The Applicant also failed to support his claim for compensation for the unfair dismissal based on 24 months.
- [9] The Applicant was therefore able to prove that at the time of his termination, he was an employee to whom **section 35 of The Employment Act** applied. The burden of proof was therefore on the Respondent to prove that the reason for the termination was one permitted by **section 36 of The Employment Act**, and also that, taking into account all the circumstances of the case, it was reasonable to terminate the service of the Applicant. (**See: Section 42 (2) of The Employment Act No. 5 of 1980 as amended**). The

Respondent failed to discharge this burden as it did not lead any evidence in court. It follows therefore that the Applicant's application should succeed.

[10] The Applicant told the court that he has a wife but no children. He told the court that he is still unemployed and survives by doing piece jobs. He told the court that he is a floor tiler and that he also fits ceilings. He said his wife is employed by a business entity called Spick and Span based in Manzini. He is thirty three years old.

[11] Taking into account all the evidence led before it, the court will come to the conclusion that the Applicant successfully proved that he was unfairly dismissed by the Respondent. The Applicant's application therefore will be granted and the court will order the Respondent to pay to the Applicant the following amounts within fourteen days from the date of judgment;

a) Notice pay	E960.00
b) Additional Notice Pay	E320.00
c) Severance Allowance	E800.00
d) Compensation (E960.00 x 12)	<u>E11,520.00</u>
TOTAL	<u>E13,600.00</u>

There was no prayer for costs in the Applicant's application, there will accordingly be no order as to costs.

The members agree.

**N. NKONYANE
JUDGE OF THE INDUSTRIAL COURT**

**FOR APPLICANT: MR. L. DLAMINI
(MABILA ATTORNEYS)**

FOR RESPONDENT: NO APPEARANCE