



IN THE INDUSTRIAL COURT OF APPEAL OF ESWATINI
JUDGMENT

APPEAL CASE NO. 6/19

HELD AT MBABANE

In the matter between:

HEAVY PLANT CENTRE (PTY) LTD

APPELLANT

And

MANGALISO SHONGWE N.O.

1st RESPONDENT

DELISILE DLAMINI

2nd RESPONDENT

**THE CONCILIATION MEDIATION &
ARBITRATION COMMISSION (CMAC)**

3rd RESPONDENT

Neutral Citation: *Heavy Plant Center (Pty) Ltd V Mangaliso Shongwe & 2 Others [6/19] [2019] SZIC 15 (16 October, 2019)*

Coram: M.R. Fakudze AJA; T.L. Dlamini AJA; M.S. Langwenya AJA

Heard: 24 September 2019; 1st October 2019

Delivered: 16 October 2019

Summary: Appeal noted - appellant's attorneys thereafter files notice of withdrawal- appellant not served with notice of withdrawal- matter postponed so appellant can be served with notice of withdrawal as attorneys of record-on date matter due to be heard, appellant had still not been served with notice of withdrawal-appeal removed from roll- appellant's costs granted *debonis propiis* at attorney client scale.

JUDGMENT

JUSTICE M. S. LANGWENYA

Background

[1] This is an appeal against the award handed down by the second respondent dated 17 October 2018 under CMAC Case Number SWMZ 503/2017. The matter was enrolled for arbitration in terms of Section 85(2) of the Industrial Relations Act 2000 (as amended) and was decided in favour of the second

respondent. The second respondent was employed by the appellant in August 2016 as parts administrator through a verbal contract. Applicant's services were terminated by the appellant on 26 July 2017. At the time first respondent's services were terminated she was earning an amount of E4,500.00 (four thousand and five hundred Emalangeneni only). Second respondent's services were terminated after she was found guilty of offences including but not limited to poor work performance, gross negligence and dereliction of duty.

[2] Subsequent to the termination of first respondent's services, no appeal hearing was convened. The second respondent subsequently reported a dispute for unfair dismissal to the third respondent. After failure to have the matter resolved at conciliation, a certificate of unresolved dispute was issued. The parties referred the dispute to arbitration and the arbitrator found in favour of the second respondent.

[3] Dissatisfied with the arbitrator's award, the appellant noted an appeal before this Court on 9 April 2019 on the following grounds:

'1. The first respondent *sic* erred in law in finding that the second respondent *sic* was unfairly dismissed despite making a finding that the second respondent *sic* was correctly found guilty of gross negligence by the appellant.

2. The first respondent *sic* ignored material evidence that was presented before him by the appellant and as such arrived at an irrational and unfair finding that the second respondent's *sic* dismissal was procedurally and substantively unfair.'

both

- [4] According to the papers before Court, the Notice of Appeal was filed by Musa M. Sibandze Attorneys while the second respondent was represented by S.K. Dlamini & Company Attorneys.
- [5] On 3 September 2019, a Notice of Withdrawal as attorneys of record was filed with the Registrar of this Court by Musa M Sibandze Attorneys and is dated 30 August 2019. There is, however no proof that the notice of withdrawal as attorneys of record was served on the appellant. Accordingly, the Court assumed that Musa M. Sibandze Attorneys were still the attorneys of record for the appellant.
- [6] On 24 September 2019 when the matter was due to be heard, Mr. S. Dlamini from Musa M. Sibandze was not present in Court. The matter was stood down and he was called by the Registrar to come to court. He came to Court three hours after the matter was due to be heard. All the while attorneys for the second respondent were waiting in Court. Mr. Dlamini for the appellant submitted that it was an oversight on the part of his office that the proof of service for the notice of withdrawal was not served on the appellant and filed in the Court record. He apologized and undertook to serve the appellant and file the return of service. The matter was postponed to Tuesday 1st October to enable Mr. Dlamini to serve the appellant with the notice of withdrawal.
- [7] On 1 October 2019 when the matter was called, Mr. Dlamini was present in Court but no proof of service of the notice of withdrawal had been filed as

earlier undertaken by Mr. Dlamini. The explanation was another apology on his part. Mr Dlamini's failure to comply with the rules is in explicable and is deprecated by this court. Mr Dlamini and not the Appellant is to blame for the non prosecution of this appeal in this session.

- [8] Other than the notice of appeal, there were no further papers filed on behalf of the appellant. For this and the reasons outlined above the appeal could not be heard. The Court granted the second respondent costs at a punitive scale to show its displeasure at appellant's attorney's dereliction of duty towards the Court, the second respondent and to the appellant. Costs were granted *debonis propriis* at attorney and client scale

M.S. LANGWENYA

ACTING JUSTICE OF APPEAL

I agree

M.R. FAKUDZE

ACTING JUSTICE OF APPEAL

I agree

T.L. DLAMINI
ACTING JUSTICE OF APPEAL

For: The Appellant: Mr. S. Dlamini
Musa Sibandze Attorneys

For the 2nd Respondent: Mr. S. K. Dlamini