



**IN THE INDUSTRIAL COURT OF ESWATINI**

**RULING**

Case No. 195/2016

In the matter between:

**ALEX DLUDLU** Applicant

And

**4 HIM SECURITY SERVICES** Respondent

**Neutral citation:** Alex Dlodlu v 4 HIM Security Services [2016] [195/2016]  
[2020] SZIC 62 (26 May 2020)

**Coram: S. NSIBANDE J.P.**

(Sitting with N.R. Manana and M.P. Dlamini  
Nominated Members of the Court)

**Date Heard:** 26 September 2019

**Date Delivered:** 26 May 2020

**Summary:** *Labour Law – Unfair dismissal – Respondent properly served with application for the determination of an unresolved dispute does not file reply – Applicant seeks and is granted an ex parte trial.*

**Held** – *Applicant’s evidence uncontroverted - No evidence led by or on behalf of Respondent to discharge its burden of proof in terms of **Section 42(2) of the Employment Act** - Termination of Applicant’s services was substantively and procedurally unfair.*

### **RULING**

[1] This is an application for the determination of an unresolved dispute brought by the Applicant against the Respondent.

[2] The application is unopposed following that the Respondent did not appear to file its Reply despite proper service of the application on it.

[3] The Applicant is an adult male of Mhlaleni, Matsapha, in the district of Manzini, Kingdom of Eswatini. He is a former employee of the Respondent.

[4] The Respondent is a local company involved in the security services industry and at the time of institution of the application, was operating from Sidvashini district of Hhohho, Kingdom of Eswatini.

[5] The Applicant instituted these proceedings on 7<sup>th</sup> July 2016 in this Court. The Respondent was served with the application on 18<sup>th</sup> July 2016 in terms of which it was called upon to attend before Court on 28<sup>th</sup> July 2016 at 9.30 am and deliver its reply to the application in six copies, if it intended to oppose the application. It was further advised, through the application that if it failed to appear on the said date judgement by default may be entered against it after the leading of such evidence as the Court may deem necessary, without notice to it.

[6] The Respondent did not appear on the appointed date and the Applicant's application for an ex parte trial was granted, the Court being satisfied with the service of process on the Respondent.

[7] The Applicant gave evidence in proof of his case. He told the Court that he was employed as a security guard by the Respondent on 1<sup>st</sup> October 2015. He earned E1386.00 per month. He was in the continuous employ of the Respondent until 3<sup>rd</sup> March 2016 when the Respondent dismissed him. He said his dismissal was both substantially and procedurally unfair in that he was not charged with any offence or taken through any disciplinary process. He says that on 3<sup>rd</sup> March while at parade with colleagues a supervisor told them to leave the parade because their employment had come to an end. The

supervisor was one George Vilakati who informed them to visit the H.R. office for a full explanation of the situation and for information regarding their terminal pay. They were informed that a client had terminated a security contract and that therefore, their employment was being terminated.

[8] It was the Applicant's evidence that during the period in which he was employed by the Respondent he worked on four public holidays; that he worked 130 hours of overtime; and that having completed his probation at the end of December 2015, his salary ought to have increased to E1868.10 in keeping with company policy. He therefore seeks payment of E972.00 being the underpayment in salary for 2 months after probation. He testified that after questioning the calculations of his terminal benefits he was not paid the terminal benefits at all. The last payment he received from Respondent was his February 2016 salary.

[9] The Applicant reported his dismissal to the Conciliation Mediation and Arbitration Commission as a dispute. The dispute could not be resolved and a certificate of unresolved dispute issued. The certificate was attached to the application and marked "AD2".

[10] The Applicant proved that at the time of his termination he was an employee to whom **Section 35 of the Employment Act** applied. It was then for the Respondent to prove that the reason for the termination was one permitted by **Section 36 of the Employment Act 1980** and also that taking into account all the circumstances of the case, it was reasonable to terminate the services of the Applicant. (See: **Section 42(2) of the Employment Act 1980 (as amended)**). Having failed to appear before Court, the Respondent was unable to discharge this burden.

[11] The Applicant told the Court that he has two children who are dependent on him. He was unable to look after them after losing his job. He told the Court he now get survives on piece jobs. He worked for the Respondent for four (4) months.

[12] Taking into account the Applicant's evidence, the Court comes to the conclusion that he was unfairly dismissed by the Respondent and awards him seven (7) months remuneration as compensation. The Court accepts that he was underpaid for two (2) months and worked during four public holidays, in the absence of evidence to the contrary. There was no evidence led with regard to the claim for leave pay. In the circumstances that claim can not

succeed. The Court therefore orders Respondent to pay the applicant the following amounts:

(a) Notice pay	E 1868.10	
(b) Underpayment 2 months	E 486.00	E 972.00
(c) Overtime for 130 hours	E 1168.05	
(d) Payment for 4 public holidays worked	E 574.80	
(e) Compensation for unfair dismissal (E1868.10 x 7)		<u>E 13076.70</u>
	<b>Total</b>	<b><u>E 17 659.65</u></b>

We award the Applicant costs of this application.

The Members Agree.



S. NSIBANDE

**PRESIDENT OF THE INDUSTRIAL COURT**

**For Applicant:** Mr L. Dlamini (Linda Dlamini & Associates)

**For Respondent:** No appearance