



IN THE INDUSTRIAL COURT OF ESWATINI

JUDGEMENT

Case No. 205/2019 [E]

In the matter between:

JEREMIAH DLAMINI

Applicant

And

FIRST NATIONAL BANK SWAZILAND LIMITED

Respondent

Neutral citation: Jeremiah Dlamini v First National Bank Swaziland Limited
(176/2015 [2021] SZIC 36 (06 August 2021))

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

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

Date Delivered: 06 August 2021

JUDGMENT

[1] The Applicant, Jeremiah Dlamini, has approached the Court for the determination of his unresolved dispute with his former employer, the First National Bank of Swaziland (the respondent in the proceedings). He contends that his dismissal was both substantively and procedurally unfair and therefore claims from the respondent payment of the following-

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|---|-----------------|
| 1.1 Notice Pay | E 31 000.00 |
| 1.2 Additional Notice Pay | E 62 000.00 |
| 1.3 Severance Pay | E1 54 990.00 |
| 1.4 Maximum Compensation for unfair dismissal | E 372.000.00 |
| 1.5 November/December salary | E 31 000.00 |
| 1.6 Costs of Suite. | |

The claim for November/ December salary was abandoned at trial the applicant having conceded that the said salary was paid and that it had been erroneously included in his claims.

[2] The applicant initially employed as a Senior Recoveries Officer on 2nd September 2002. By the time of his dismissal on 26th November 2014 he had been promoted to the position of Marketing Manager for Wesbank, which was said to be a division of the Respondent. He was earning a monthly salary of E31000 (thirty-one thousand Emalangeni). It is common cause that the applicant was in the continuous employment of the respondent for a period of twelve years.

[3] The applicant's evidence was that he was initially suspended on 11th August 2014 pending finalisation of certain investigations and that on 9th September he received a notice of disciplinary enquiry informing him to attend a disciplinary hearing on the 15th September 2014. The applicant faced three (3) charges at the disciplinary hearing, namely -

3.1. *"Dishonesty and fraud (paragraph 5.2.1. of the Disciplinary code and procedure in that -*

(a) Late June 2013, while approving a deal for Nomthunzi Mngomezulu, you knowingly approved the deal despite having verified and confirmed with Swazi Bank that the quotation settlements submitted by the settler was fraudulent.

(b) Dishonestly and fraud (paragraph 5.2.1 of the disciplinary code and procedure) in that-

After your inspection, you failed to report a discrepancy in the colour of the car that you inspected, where you state that the car was a black Hyundai Sonata registered CSD205BH as it was purported to be the car you were financing in the deal in respect of Nomthunzi Mngomezulu yet you had a quotation for the sale of a metallic white Hyundai Sonata 2.4 Auto Executive 2012 model purported to be from the seller, Ntombindze Gama dated 03 June 2013.

3.1.2 Damage or loss suffered by the bank through neglect of duty, disregard of its rules and procedures (paragraph 5.2.12 of the Disciplinary Code and Procedure) in that-

In the review process you approved conflicting documents i.e. a settlement quotation purportedly from Swazi Bank in the name of Sibusiso M Mkhonta account number 77020685327 showing a settlement amount of E67 830.40 and accepted it in conjunction with a Swazi Bank deposit slip in the name of Ntombindze Gama account number 7702685327 which through divergent, you accepted as supporting documents for the unit being financed."

The applicant pleaded not guilty to all the charges. He was found guilty on all three charges and the chairperson of his disciplinary hearing sanctioned a summary dismissal. He appealed the decision but the appeal chairperson upheld the original verdict of guilty and the sanction of summary dismissal.

[4] The circumstances giving rise to the charges against the applicant that culminated in his subsequent dismissal revolve around the approval of a loan facility granted to one Nomthunzi Mngomezulu for the purchase of a motor vehicle. The applicant's evidence was that Wesbank was in the business of granting loans for the purchase of assets, which included car loans. He testified that a person who sought a loan to purchase a second hand vehicle, as Nomthunzi

Mngomezulu did, would first meet a Wesbank Business Development Officer, who would assist with the completion of a finance application form. Once this is done certain documents or copies thereof must be attached to the finance application form. These include the applicant's identity document, her driver's licence, proof of address, a quotation from the seller, the applicant's payslip or a letter from his/her employer confirming employment and salary. A settlement quotation is also required if the vehicle being purchases is still under finance. The financial institution financing the vehicle would issue the settlement quotation. Proof of settlement would be required if the applicant states that the financing institutions has been paid in full. Finally, a copy of the blue book would also need to be produced. All these documents are handed over to the Business Development Officer who is subordinate to the Marketing Manager.

- [5] The Business Development Officer would then write motivation on the application form and hand over all the documents to the Marketing Manager. The Marketing Manager would look at the completed application form and supporting documents and then sign a pre-approval, if satisfied with the documents before him. He would then hand the file over to the Wesbank regional Manager for final approval of the application. The Regional Manager's signature would signal the approval of the application. However, the Finance and Administration departments responsible for the pay out on the application, would require its Validations Officer to verify and confirm whether the person

applying for finance was actually employed where he wrote he was employed and if his salary corresponded with the one on the application form. Once the validation was done and the Validation Officer had signed the forms then the purchase price would be paid by the bank to the seller.

[6] With regard to the matter before Court the applicant testified that his Business Development Officer, Mbali Dlamini, brought an application by one Nomthunzi Mngomezulu to him. The application was accompanied by all the documents required for a finance application and went through the process described in paragraphs 4 and 5 above i.e., the applicant as Marketing Manager looked at the application and pre-approved it and moved the file forward to the Regional Manager, Mr Kevin Brooks. Mr Brooks viewed the file and approved the application and moved the file forward to the Finance and Administration Manager Mrs Khetsiwe Khumalo who, in turn gave it to the Validation Officer Ms Dolly Sibandze for final validation. One Shirley Dlamini an officer in the Finance and Administration department then prepared the final pay-out. An amount of E250 000 (two hundred and fifty thousand Emalangenani was paid out to the seller Ntombindze Gama and the transaction having been approved in the normal way.

[7] It was the applicant's evidence that about a year later, sometime in 2014 a complaint was raised that some of the documents used to support the Nomthunzi

Mngomezulu application for finance had been fraudulent. In particular, the applicant identified a settlement quotation dated 17 June 2013 as the document said by the respondent to have been fraudulent. He stated that when the document was brought to him he could see that the name of the seller was different. Instead of Ntombindze Gama the seller was Mkhonta Sibusiso M. The applicant denied that he had done any verification with the Swazi Bank in regard to the Nomthunzi Mngomezulu transaction. He stated, however, that during his disciplinary hearing he had said that it was negligent of him not to see the error he had just pointed out to the Court- not seeing that the person who now appears as a seller was different from the one named on the invoice or the one that was known as a seller. That was something he did not see.

[8] He discounted the evidence given by one Mfanafuthi Mabuza of the Swazi bank, at the disciplinary hearing to the effect that he (Mfanafuthi) and a colleague, Thembeni Nxumalo had met with the applicant at his Wesbank offices to verify certain documents. Mabuza had further told the disciplinary hearing that the clearance letter they were meeting the applicant about was in the name of Ntombindze Gama while the bank statement was in the name of Nomthunzi Mngomezulu. Mabuza had told the hearing that he had conveyed a message that the documents were not authentic and were not from the Swazi Bank and that he had told applicant that he (Mfanafuthi) had not written and signed the clearance letter purported to have been signed.

[9] Applicant's evidence was that Mr Mabuza had not been truthful at the disciplinary hearing. While he admitted to calling Mr Mabuza to his office sometime in 2013, applicant denied that this had been in respect of the Nomthunzi Mngomezulu application. He asserted that this had been in respect of an application by one Nokwazi Matsenjwa, which had been submitted to him by one Emmanuel Mkhonta who was also a Business Development Officer at Wesbank at that time. Mr Mabuza had, however insisted at the hearing that they had met over the Nomthunzi Mngomezulu application and no other.

[10] It is a common cause that neither Mfanafuthi Mabuza nor Thembeni Nxumalo gave evidence before Court. It was the applicant's submission that because Mfanukhona Mabuza was unable to produce a copy of the settlement letter he was talking about because he had lost it, and because neither her nor Mr Nxumalo testified before this Court then count 1(a) ought to fall away. It was submitted that Mabuza had, for some reason known only to him, agreed to implicate the applicant by stating that he had spoken to applicant about the settlement letter in the loan application involving Nomthunzi Mngomezulu and had been a part of respondent's conspiracy scheme against the applicant.

[11] With regard to charge 1(b) the applicant was accused of dishonestly and fraud in that after he had inspected the vehicle, he failed to note and report a discrepancy

in the colour of the car that he inspected. He had noted that the vehicle to be financed was a black Hyundai Sonata registered CSD 205BH whereas he had a quotation for a white metallic Hyundai Sonata 2.4 auto executive 2012 model. In his evidence before Court, the applicant stated that he had acknowledged the discrepancy in the colour of the vehicle at his disciplinary hearing and had admitted that he made a mistake. He denied being dishonest or acting fraudulently because he the respondent. He admitted to having acted negligently in not spotting the colour discrepancy and it was submitted on his behalf that such negligence should not have resulted had indeed seen a black vehicle and that was the vehicle that was financed by in his dismissal, taking into account his years of unblemished service.

[12] With regard to the last charge, the applicant was said to have caused damage or loss to the Bank through neglect of duty and disregard of its rules and procedures in that in the review process he approved conflicting documents i.e. a settlement quotation purportedly from Swazi Bank in the name of Sibusiso M. Mkhonta account' number 77020685327. He is said to have accepted it in conjunction with a Swazi Bank deposit slip as proof of payment of E67830.40 in the name of Ntfombindze Gama account number 77020685327 which though divergent, the applicant accepted as supporting documents for the unit/vehicle to be named.

In this defence, the applicant, while conceding that the settlement quotation and the Swazi Bank deposit slip were divergent, testified that there was no loss suffered by the Bank because the loan was being properly serviced. He testified that once the Bank discovered that there was fraud in any transaction it financed the first thing it did was to attach the financed asset and the request that the account be written-off. He testified that in this particular instance with regard to the Nomthunzi Mngomezulu account, it appears that the Bank first wrote off the account before it sought to attach the vehicle.

[13] The applicant testified that the attached vehicle would be evaluated and the market value thereof determined. He stated that the practice as he knew: - was that the attached vehicle would not be sold for less than its market value less the costs of reconditioning (if necessary).

[14] With regards to the vehicle at hand, the applicant took the Court through the loan account statement, which showed the original amount of the loan, the amount due and the amount paid, among other things. He identified that the vehicle loan was written off on 30th September 2014 and that the respondent wrote off an amount of E1 88 216.58. He confirmed that the respondent was forced by the fraud it had uncovered to write off the debt. In terms of the statement the vehicle was sold for E130 000.00. The applicant went through the statement and explained a number of the entries. Ultimately he was asked to assist the

Court compute the loss suffered by the Bank. His response to that was that he would add to the amount written off (E188 261.58) the amount of legal fees shown in the statement (E8479) and then subtract the amount the bank received for the attached vehicle (E130 000.00). He came to the conclusion that the Bank had lost an amount of E66 740.58 through the "fraudulent" loan agreement involving Nomthunzi Mngomezulu.

[15] The applicant next gave evidence on the alleged contravention of clause 1.2 of the respondent's disciplinary code and procedure in terms of which the parity principle in issues of employee discipline was to be upheld by the respondent. He took the Court through the application process undergone by Nomthunzi Mngomezulu in order to access the vehicle finance loan that eventually led to his dismissal by the respondent. He pointed out that one Amanda "Mdoli" Sibandze was responsible for the validation process in terms of which she confirmed having spoken to one Mpumelelo at place of employment of Nomthunzi Mngomezulu, who confirmed that Nomthunzi was indeed employed as a Marketing Manager. He testified that Amanda Sibandze was never charged for her role in the transaction and that at the time that he gave evidence she was still an employee of the respondent.

[16] Further, he identified the signature of his then Regional Manager, Mr Kevin Brooks. His testimony was that the Regional Manager, was expected to go

through the file and satisfy himself that all, in the file was in order before appending his signature and thus approving the loan. Having missed the "fraudulent" documents in the application, applicant expected that the Regional Manager would also have been subjected to disciplinary action in terms of parity principle.

[17] In his submissions, the applicant pointed out that the respondent failed to apply fair and consistent disciplinary action amongst its employees that had processed the vehicle finance loan application of Nomthunzi Mngomezulu. He submitted that the disciplinary code and procedure was binding on the respondent and that the Court has held, in a number of its decisions, that discrimination in the manner in which discipline is meted out by an employer is to be frowned upon and in the absence of a plausible explanation, censured.

[18] The applicant was cross-examined extensively by the respondent. Most of the cross-examination was based on the record of proceedings at the applicant's disciplinary hearing. We will return to the pertinent evidence extracted from the applicant in chief and in cross-examination.

[19] The Respondent led four witnesses in its defence and in proof of its case. These were Bongani Sibonginkhosi Edison Mdluli and Precious Obeng-Manu.

[20] Respondent's witness, Bongani Mdluli (RW1) told the Court that he was in the employ of the respondent since 2006 and now held the position of Recoveries Team Leader, in the Credit Department. His testimony was that where there was to be a second hand vehicle to be financed by the respondent, it was his department that was tasked with the responsibility of inspecting that vehicle. He testified that his department would use a Condition Report Form in carrying out the inspection. This form had a list of things the inspecting officer had to look out for and report on. He referred the Court to page 6 and 7 of Applicant's Supplementary Bundle of Documents (A2) for the Condition Report Form. In terms of this form, the officer inspecting the vehicle would have to indicate, on the form the condition (good, fair or bad) in which he found, for example, the bonnet, the front bumper, the tyres etc. He would also be expected to make remarks, if he had any, in the space provided. It was his testimony that this form was used for inspection of vehicles that were to be financed by the respondent and those that had been repossessed by the respondent.

[21] This witness was shown the applicant's inspection report, which was written on a piece of paper and asked to comment on it. The witness noted that the report did not include an engine number nor a chassis number of the vehicle to be financed, which in his view were important to capture in view of the fact that these never change. He stated that the applicant's inspection report was unusual in the manner in which it was captured and that it was unacceptable to the

respondent to file such a report. The report according to Ndzimandze should have been captured on the Condition Report Form as per normal procedure, it should have come from his department.

[21] The witnesses further told the Court that he got involved with Nomthunzi Mngomezulu's account when it started to fall into arrears. He had to call the client to discuss her payments, which were behind. He spoke to a certain Gugu Gwebu, who was the client's sister. The telephone details of the said Gugu had been loaded on the system. According to the witness Ms Gwebu said she was the one responsible ensuring that her sister's account was paid and did not fall behind. He then took the Court through the Account Remarks document and testified that the accounts history of payment indicated that it was badly conducted with the client having to be called to make payment time and again. He confirmed that the vehicle was eventually repossessed and that it was repossessed from a third party to whom it had subsequently been sold. According to the witness, when he was no longer able to find Gugu, he reverted to Nomthunzi who then told him that, as far as she knew the vehicle had been sold to someone in Mbabane. She further told the witness that as she was aware she had no facility or debt with the respondent arising from the financing of the said vehicle. The witness then reported this to his fraud department and an investigation ensued.

[22] Finally, this witness took the Court through the account and the payments made therein and told the Court that the loss suffered by the respondent amounted to E108 295.01 with legal fees. This is the amount that was never recovered due to the manner in which the account had to be closed.

[23] In cross-examination, the applicant sought to show that the Condition Report Form was not always used in the inspection of pre-owned vehicles and that there was nothing untoward with the applicant carrying out the inspection of the pre-owned vehicle that was to be financed by the respondent. The witness was resolute that the evidence he gave in chief reflected the correct position regarding the Condition Report F01m and the inspection of pre-owned vehicles.

[24] The second witness, Khetsiwe Oliet Khumalo (RW2) gave evidence with regard to the process undertaken when a client sought finance for a pre-owned vehicle and the departments through which the application went. She confirmed the applicant's description of the process through which car loan applications take from the initiation of the application to the final payment of the purchase price to the buyer. Her evidence was that it was the Marketing Manager's responsibility to authenticate the documents provided by an applicant seeking vehicle finance. It became clear that the word authenticate was used loosely by the respondent and that it was understood to mean that the Marketing Manager would ensure that the documents provided were the right ones regarding the

applicant, the vehicle, the settlement figures (if any) and the seller of the vehicle. In other words, to ensure that the identity documents was the applicant's identity documents and that the settlement documents referred to the correct seller; not necessarily that they had been properly issued. To a question by the Court, this witness confirmed that the Regional Manager was expected to go through the documents in the file and confirm that they were in order.

[25] The Respondent's third witness (PW3) was Siboniso Mdluli who had been the chairman of the applicant's disciplinary hearing. He confirmed the witnesses that appeared before him at the hearing and handed in this report of the disciplinary hearing of the applicant as part of his evidence. In cross examination, he was taken to task about the evidence of one Emmanuel Mkhonto who had given evidence on behalf of the applicant at the disciplinary hearing. He testified that Mr Mkhonto had told the hearing that the inconsistency that had been picked up in the matter application of Nokwazi Matsenjwa was with regard to a payslip that they had to confirm with the Swazi Bank. He explained that he had not found Mr Mkhonto to be credible because he had said he confirmed a payslip with Swazi Bank whereas payslips are confirmed with the employer and not a bank nor could he recall the branch that he called to authenticate the payslip. Mr Nhleko, for the applicant sought to establish that the witness (Mr Mkhonto) had testified, at the hearing about a settlement letter from the Swazi Bank as well. It was suggested that this witness

was exhibiting bias by not mentioning the settlement letter and by speaking only of the authentication of the payslip. This witness was also questioned about the accuracy of his report given that he noted that in the documents presented by the initiator was a completed and signed application, approved by the applicant whereas as the time that he received the said document it had also been signed and approved by the Regional Manager of Wesbank. His bias was said to have formed a large part of the applicant's appeal; that the applicant was complaining about his bias. RW3 denied any bias.

[26] The final witness for the Respondent RW4 was Precious Obeng-Mane who had been the respondent's Human Resource Manager at the time that the applicant's disciplinary hearing was held. She testified that she was no longer employed by the respondent but was employed elsewhere. In her testimony she mainly sought to explain why the applicant was the only senior manager disciplined for the allegedly fraudulent application that led to his dismissal. She explained that the business Development Officer, Mbali Dlamini was charged in connection with the said application and that however, midway through her disciplinary hearing the said Mbali resigned from her employ.

[27] With regard to the Regional Manager, Kevin Brooks, the witness testified that his role was to approve credit and that in respect of that role all he needed to do was to make sure that all the documents that were supposed to be in the file,

supporting the application were there. He would be entitled to assume that the Marketing Manager would have checked and authenticated each supporting document that required authentication. The Regional Manager would not be expected to authenticate or validate any of the documents as it was expected that the junior manager would already have done that. It was on this basis, this witness said, that Kevin Brooks was not disciplined for his role in the allegedly fraudulent application.

[28] RW4 further told the court that after the Admin Officer, who is responsible for paying out the loan had done so, the file returned to the Regional Manager for filing purposes. She testified that when the file in question returned to the Regional Manager, Kevin Brooks had left Wesbank Swaziland and in his place was one Phinda. The new Regional Manager was also not disciplined because his role was simply to file the application file away. The witness confirmed that the Regional Manager was expected to ensure that whatever was supposed to be in the file was there and that whatever was being approved qualified based on what the Manager who has authenticated the documents has said.

[29] It was put to the witness that there was a conspiracy against the applicant within the respondent to have him disciplined and dismissed. She denied any knowledge of any conspiracy and stated that there would have been no basis for any conspiracy against the applicant because he was a very good performer

performer and was considered a high performing Manager whom the respondent would not want to have dismissed.

[30] It is common cause that there are two divergent versions of the events that led to the dismissal of the applicant from his employment with the respondent. In his submissions, the applicant states that the respondent's version is far-fetched and false. He alludes to a conspiracy between the respondent and an official of the Eswatini Bank, Mfanafuthi Mabuza. He alleges that Mr. Mabuza agreed to implicate the applicant for reasons best known to him by testifying at the disciplinary hearing and confirming that a meeting that had taken place between applicant, Mabuza and Thembeni Nxumalo had been in respect of a settlement letter in the application of Nomthunzi Mngomezulu instead of one Nokwazi Matsenjwa. Because of the failure of Mr. Mabuza to testify before this court, the applicant submits that charge 1(a) should fall.

[31] The settlement quotation said to be fraudulent in respect of the first charge was handed in and purports to be from the Swazi Bank. It is dated 17th June 2013 and is titled **SETTLEMENT QUOTATION**. The customer name cited therein is Mkhonta Sibusiso M. The document goes on to say GODS DESCRIPTION under which it has:

Make: Hyundai Sonata 1.4 GLS

Model: 2012

Year of First

Registration/

Manufacture; 2012

Registration No. CSD205BH

Asked by his attorney if the document is authentic or fraudulent, the applicant said he now saw that the document looked fraudulent. When asked to tell the Court why he says the document is fraudulent, applicant answered - *"When looking at this document My Lord, when it was brought to me, now I can see that the name of the seller is not the one that is supposed to be on the document as the actual seller of the vehicle was Ntfombindze Gama. "*

He testified that the name of the seller appears under the heading AGREEMENT DETAILS, at Customer Name, where the name Mkhonta Sibusiso M appeared.

[32] Applicant's defence to this charge was that he had not verified and confirmed with Swazi Bank in relation to the Nomthunzi Mngomezulu application; that he had met Mabuza of Swazi Bank to verify or look at some documents in relation to a completely different application of one Nokwazi Matsenjwa. He stated that a letter similar to the one he now saw to be fraudulent had been filed in the Nokwazi Matsenjwa application and it was this document that Mabuza had indicated was fraudulent.

[33] With regard to this charge the applicant stated that he had told the disciplinary hearing that it was negligent of him not to have noticed that the person who now appeared as seller was different from the one on the other documents such as the invoice or the known seller. He made the same concession in court; that it was negligent of him not to have seen that the seller was different.

[34] From a reading of the settlement quotation it appears that the applicant missed a number of discrepancies in the document. He missed the seller's name, the motor vehicle model, the vehicle stated in the document being a *Hyundai* Sonata 1.4GLS instead of a Hyundai Sonata 2.4 Auto Executive as well as a host of spelling mistakes on the document - on the letterhead Swaziland is spelt with a small letters, the Bank is established under King's **Oredr in Coucil** and the vehicle is described under a heading reading **GODS DESCRIPTION**.

[35] If one has regard to the settlement quotation and the deficiencies found therein, it is extremely doubtful that the applicant was merely negligent in accepting this document in the application of Nomthunzi Mngomezulu. The applicant was a senior employee of the respondent who had gone through the rattles of the bank and had worked for it for about fourteen years. What we also find

significant is the applicant's reaction to the discovery of the "fraudulent" settlement quotation. He simply says he did not see that the seller was not named on the document. Part of his job was to check and ensure that the documents put together by his Business Development Manager were the correct documents and related to the application at hand. He could not be seen to adopt a lackadaisical approach to such an important aspect of his work.

[36] With regard to his failure to report the discrepancy in the colour of the vehicle he inspected and the vehicle to be financed, the applicant conceded that he failed to see the discrepancy and that he did not raise the issue of the colour of the vehicle with the respondent nor ask the persons with whom he was inspecting the vehicle about the colour discrepancy - he noted that the vehicle was black when the vehicle quoted was metallic white. A lot was made of the allegation that the collections department should have carried out the inspection and that a particular form was used to carry out the inspection. In our view, even if the applicant is correct in his assertion that he was within his rights to carry out the inspection and that there was nothing wrong with him writing his inspection report on a piece of paper as he did, the failure to note the difference in the colour of the vehicle being inspected and the one quoted for sale appears to be more than just oversight. For a person of his experience, this discrepancy should have, in our view jumped out at him and should have made him more circumspect in his dealings with that particular application.

[37] The applicant in his submissions denied that he had been dishonest in processing the application of Nomthunzi Mngomezulu. He further denied all fraudulent allegations directed at him and submitted that there ought to have been proof of intention to deceive and with regard to fraud, proof of intention to derive unfair or unlawful financial or personal gain by the employee. It was submitted that in the absence of evidence led from the Swazi Bank employees, Mfanafuthi Mabuza and Thembeni Nxumalo, the respondent had been unable to show either dishonesty or fraud on the part of the applicant.

[38] This court, in the matter of **Central Bank of Swaziland v Memory Matiwane (ICA Case No. 110/93)** held that in the determination of an unresolved dispute, the Industrial Court must evaluate the facts and evidence placed before it and to that end have regard to the facts and evidence available during the disciplinary hearing and appeal hearing.

On an evaluation of the facts and the evidence before this court and even without the evidence of the two Swazi Bank employees, it is our view that the respondent has shown, on a balance of probability that the applicant was dishonest in his handling of the Nomthunzi Mngomezulu application. The applicant held a position in which a high degree of trust and confidence was placed in him and in which a high standard of care was expected of him. He has made concessions on having missed crucial discrepancies in the documents filed regarding the application and attributes this to negligence. The

nature of the discrepancies is, in our opinion, such that they could not have been missed by a manager with applicant's years of experience working at the bank, particularly one who had worked in the motor vehicle loan environment for as long as the applicant had. It would appear the applicant for reasons best known to him deliberately overlooked them.

[39] **John Grogan** in his work **Workplace Law** 10th edition at page 211 states, *"dishonesty in the employment context can take various forms including theft, fraud and other underhand conduct."* We have no doubt that the applicant acted in an underhanded manner in approving the loan application of Nomthunzi Mngomezulu when the settlement quotation was clearly a fraudulent document and when he had not raised any query after inspected a vehicle that was of a different colour from all the documentation before him. It is our finding that the respondent has discharged the burden placed on it by **Section 42** of the **Employment Act No.5 of 1980**, it terms of which it was to prove that the applicant's dismissal was fair and that taking into account all of the circumstances of the matter it was reasonable to terminate the services of the employee. *"Any form of dishonest conduct compromises the necessary relationship of trust between employer and employee"* (**Le Roux and Van Niekerk- The South African Law of Unfair Dismissal page 131**).

[40] The applicant's complained further that he was selected for discipline, unfairly and in contravention of the parity principle enshrined in the respondent's disciplinary code. He complained that none of those who dealt with the loan application of Nomthunzi Mngomezulu, in general and the Regional Manager, Kevin Brookes, in particular were disciplined.

[41] This court, in the matter of **First National Bank of Swaziland Limited v Lungile Masilela ICA Case No. 1/2019** (cited by the applicant's attorneys in their final submissions) confirmed that the parity principle in disciplinary matters was part of our law. **Mlangeni AJA** in his judgement stated that, *"it is needless, however, to point out that such discriminatory conduct on the part of an employer is to be frowned upon and, in the absence of a plausible explanation, deserves censure."*

[42] In terms of the said principle it is to ensure that like cases are treated alike. An employee who seeks to rely on the parity principle as an aspect of challenging the fairness of his own dismissal must put sufficient information before the employer to afford it the opportunity to respond effectively to the allegation. The respondent complained that the applicant made a terse statement that all those who were involved in the Nomthunzi Mngomezulu application should have been charged, disregarding the different roles they played. It was submitted that it would be unfair to cast the net so wide as to say all those who

touched the application be disciplined regardless of role played and culpability. We agree with the respondent in this regard. The only people who were tasked with collecting documents and ensuring they were the right documents regarding the applicant and her application were the Business Development Officer, the applicant and to some extent the Regional Manager. The other officers simply confirmed, by phone whether the person applying for credit was indeed employed at the given employer and if her salary was correctly given. It is difficult to see how these people could have been complicit in the application at hand.

(43] The respondent's evidence is that the Business Development Officer, Mbali Dlamini was taken through a disciplinary enquiry for her role in the application complained of. The Business Development Officer is expected to receive all the documents required for an application directly from the applicant and to consider these and ensure verification of same before passing the file on to the Marketing Manager. She would have had to explain the existence of the fraudulent settlement quotation and the handwritten inspection report with the wrong vehicle colour. According to RW4, Ms Obeng Manu, the Business Development Manager resigned from her employ before the conclusion of her disciplinary enquiry.

[44] With regard to the Regional Manager, PW4 pointed out that he was not expected to do the work of the Marketing Manager i.e. to call and verify documents. The authentication of documents was for his subordinates and he was entitled to trust that they had executed their duties with the due diligence and good faith. She stated that there would be no reason for the Regional Manager to be disciplined because he signed off on the application based on trust that his Marketing Manager had done his work correctly. While we agree that it would not be necessary that the Regional Manager re-invent the wheel, so to speak, by re-authenticating all the documents in the file, it would be part of his supervisory duties to ensure that the right documents were in the file e.g. to see if the settlement quotation or the life policy document filed was in respect of the right applicant. His failure to do that should, once the particular application was found to be fraudulent, have led to the Regional Manager being held to account somehow for his failure to carry out his oversight duties.

[45] But does this failure to discipline the Regional Manager exonerate the applicant from blame for his dishonest conduct? In the matter of **Absa Bank Limited v Naidu and Others [2015] 1 BLLR (LAC)** the court, in answering a similar question stated that while the parity principle is an important factor to take into account in the determination of the fairness of a dismissal, *"it is only a factor to take into account..[and] is by no means decisive of the outcome on the determination of reasonableness and fairness of the decision to dismiss... the fact that another employee committed a similar transgression in the past and*

was not dismissed cannot, and should not, be taken to grant a license to every other employee, willy-nilly, to commit serious misdemeanours, especially of a dishonest nature, towards their employer on the belief that they would not be dismissed. The parity principle was never intended to promote or encourage anarchy at the workplace. "

Our Court of Appeal in the **First National Bank of Swaziland v Lungile Masilela (supra)** stated that it was *"arguable whether or not no-compliance with the parity principle should have the effect of exonerating a worker who is shown by evidence to have violated a work place rule. "* With regard to that matter, the Court found that The Industrial Court *"...having found that the applicant was guilty of dishonesty, with respect it erred to then conclude that the dismissal was substantively unfair for want of compliance with the principle of parity."*

[46] On the facts of this matter, applicant was suspended on 11th August 2014, in relation to the Nomthunzi Mngomezulu vehicle loan application. the loan application had been finalised sometime in June 2013. According to the Pay-out Authorisation Request form and evidence led by the applicant, both he and the Regional Manager, Kevin Brooks, approved the loan on the 21st June 2013. According to PW4's testimony, his line manger, Phinda Dube, brought the charges against the applicant after Kevin Brooks had left Wesbank Swaziland. By this time, Mr. Dube had taken over as Regional Manager and he had

received the Nomthunzi Mngomezulu file after payment of the loan amount had been made to the seller. PW4 told the court that the file is, at that stage returned to the Regional Manager for filing, which explained Mr. Dube's signature on the file. The applicant, in his examination in chief stated that Mr. Dube took over from Mr. Brooks. It would appear from the facts that at the time that the applicant was disciplined, after the discovery of the fraudulent document, Kevin Brooks was no longer employed at Wesbank Swaziland and for all intents and purposes, could not be disciplined by Wesbank Swaziland.

[47] In any event, if one has regard to the **First National Bank of Swaziland v Lungile Masilela (supra)**, it would be an error to find that the applicant's dismissal is substantively unfair in the face of our finding that he acted dishonestly in approving the loan of Nomthunzi Mngomezulu. Having made that finding and having considered all the evidence led, it follows that there existed a fair and objective basis for taking disciplinary action against the applicant and his reliance on the parity principle as a basis on which to contend that his dismissal is unfair is unfounded. Such a finding would be manifestly unjust regard being had to the nature of the misconduct he was found guilty of and the nature of the workplace within which it was committed.

[48] In view of the foregoing the Court makes the following order-

1) The applicant's claim against the respondent is hereby dismissed in toto.

2) Each party is to pay its own costs.

The Members Agree.

S.NSIBANDE
PRESIDENT OF THE INDUSTRIAL COURT

For Applicant: Mr H. S. Nhleko (Dunseith Attorneys)

For Respondent: Mr S. Dlamini (Musa M. Sibandze Attorneys)