IN THE INDUSTRIAL COURT OF APPEAL OF SWAZILAND

SWAZILAND MEAT WHOLESALES

Appellant

Vs

KHUMALO Zacharia Respondent

Appeal Case No. 23/2001

Coram SAPIRE, JP

MATSEBULA, JA

MAPHALALA, JA

For Appellant Z. JELE

For Respondent W. MKHATJWA

JUDGMENT

(01/07/2002)

We have considered the appeal in this matter and have come to a unanimous conclusion. The applicant carries on the business of a wholesale butchery. The respondent in the matter was an employee and he was an engineer whose work it was to

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keep charge of the machinery used in the slaughtering animals at the appellant's premises. The dispute in this matter arose in the following way:

The respondent for personal reasons applied for leave to his immediate superior to be away from his job on 30th September 1998. The employer refused him leave, for the afternoon and said that one of them had to be on the premises while slaughtering was in progress and that as he, the employer was going to Manzini for the day, the leave request could not be granted. The respondent attended in the morning and according to the evidence he was present in the afternoon until about half past three when according to him the slaughtering was completed and he took time off thereafter. The whole period involved, one and half-hours. For this he was disciplined, brought before the employer It was a stormy meeting at which words may have been used inappropriate in the work place The respondent was dismissed on the grounds of absenteeism.

He took the matter to the Industrial Court which ruled, that the then respondent, who is now the appellant had not succeeded in proving a proper and fair dismissal and gave judgement in favour of the appellant.

Against this the appellant has appealed. The appellant is faced with insuperable difficulties. First of all the appeals to this court are only on questions of law. It is not for this court to consider the correctness of the decisions on questions of fact that have been made in the court a quo. The central question of fact in this case is whether the respondent was in fact absent or not, in terms of Section 36 (f) but in terms of Section 36 (1) which is in general terms.

The indisputable fact found by the court a quo was that the appellant only left after the slaughtering for the day had been completed. The only other evidence to contradict this was the evidence from the employer's

side, which was hearsay. Quite clearly those who gave evidence had no personal knowledge of the events. If indeed the slaughtering for the day had been completed the evidence is that all the employees

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including the engineers had nothing further to do and it was usual for them to leave before the closing time.

We cannot disturb this finding. In view of this there is no basis for the appeal at all.

Mr. Jele who argued the matter for the appellant constantly came up against this obstacle but he could not displace it. The respondent was not shown to have been absent in any way detrimental to the appellant's business by a wrongful act which can be visited with a dismissal.

Accordingly the appeal must be dismissed and the order of the court a quo is confirmed.

SAPIRE, JP.

I AGREE

MATSEBULA, JA

I AGREE

MAPHALALA, JA