

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 132/91

In the matter between:-

THEMBA SHABANGU

AND 38 OTHERS

APPLICANTS

and

SWAZILAND GOVERNMENT

RESPONDENT

QUORAM:

MARTIN S. BANDA

PRESIDENT

MR. V.N. DLAMINI

ASSESSOR

MR. I. YENDE

ASSESSOR

MR. DUNSEITH

for the Applicants

JUDGMENT

The Applicants in this matter are claiming compensation for their unfair dismissal from their employment by the Respondent. The applicants claim is made up as follows:-

- (1) Tony Mavimbela salary for April 1984 in the sum of E236.25
- (2) Gasolo Nkambule salary for April 1984 in the sum of E245.70
- (3) All the other Applicants salaries for April May and June 1984 as shown in Annexure A
- (4) Leave pay due
- (5) One month notice
- (6) Additional Notice
- (7) Severance Allowance
- (8) 6 months compensation in lieu of notice

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- (A) Total e terminal benefits claimed in sum of E29,358.42
- (B) Total compensation claimed E36,866.70

Respondent did not file a reply. Respondent was represented by Mr. E.V. Dlamini of the Attorney Generals chambers at the outset of the case. He asked for time to attempt an put of court settlement. This was on the 19th August 1991. The applicants submitted, that matter be adjourned for 3 weeks to enable the parties explore the possibility of a settlement and that in default of such settlement the Respondent should file a reply or matter would proceed exparte. Mr. Dlamini then suggested the 9th September 1991.

The matter was adjourned to the 9th September 1991 for filing of a reply by the Respondent. On the 9th September 1991 there was appearance for the Respondent. The Respondent applied that matter be adjourned as they had received instructions and there was a possibility for settlement out of court. Matter was adjourned to the 10th October 1991 for filing of a reply. On the 10th October 1991 there was no appearance for the Respondent. Matter was adjourned to the 15th November 1991 for trial. On the 15th November 1991 there was no appearance for the Respondent. The matter proceeded as an ex parte trial.

The Applicants lead the evidence of DW 1 THULI SITHOLE who testified that she is one of the Applicants in the matter. She testified that she was employed in the Tin Project under Geological Survey of the Swaziland Government as an Assistant Accounts Officer. She prepared wages for the employees. She prepared Annexure A. She got information to prepare Annexure A from the Wage Time Books of the Respondent. These show the number of days worked by various employees. She knew the employees occupation and income. She stated that all the Applicants were employed in terms of information on Annexure A.

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DW1 testified that Jonny Mavimbela and Gasolo Nkambule resigned in May 1984 from employment because the Government couldn't pay their salaries for April 1984. As a result they were compelled to resign in May 1984. They resigned because they were not paid their salary. The other Applicant were not paid salaries for the months of April, May and June 1984. Apart from Tonny Mavimbela and Gasolo Nkambule all the other Applicants continued working.

In July 1984 they were called at Headquarters and told to go and wait at their homesteads and that they would be called when the money was ready.

All the Applicants left. They were not called to be told that the money was ready. They have not been paid salaries for April, May and June 1984 or anyother terminal benefits. They were forced to resign.

DW1 testified that Annexure A is wages for April, May and June; Leave due; Notice; Additional Notice; Severance; sleeping out allowance; she testified that they were entitled to be paid wages shown in Annexure A. The Applicants waited for 5 years before looking for other jobs. This caused hardships to the applicants. They are now claiming 6 months wages as damages and this is shown on exhibit P "1"

The total sum due to the Applicants as wages and terminal benefits is in the sum of E29,358.42. The sum due as 6 months wages compensation is E36,866.70. Applicants would now like the court to award them damages and benefits as shown on Annexure A and exhibit P"1".

This was an undefended case. Applicants testimony was not challenged by the Respondent. We are satisfied on a balance of probability that the applicants were employed by the Respondent. We are satisfied that the Respondent did not pay the Applicants their salaries for the months of April, May and June 1984.

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We are further satisfied that the Respondent did not pay the Applicants any terminal benefits or compensation as shown on Annexure A and exhibit P "1" amounting in the sums of E29,358.42 and E36,866.70 respectively.

We are satisfied on the basis of the evidence before us that the Applicants were unfairly and constructively dismissed by the Respondent. We consequently order that the Respondent do pay the Applicants the sum of E29,358.42 representing their terminal benefits and E36,866.70 damages for 6 months wages as compensation. Upon dismissal from the Respondents employment the Applicants stayed 5 years without securing alternative employment. Evidence has been tendered showing the income of the Applicants at the time they were dismissed.

The circumstances of the dismissal and prospects for obtaining other equivalent employment.

This is a case whose trial was delayed by the Respondent deliberately. The case first came up on the 19th August 1991 and was adjourned to the 9th September 1991. On the 9th September 1991 the matter was adjourned to the 10th October 1991. On the 10th October 1991 it was adjourned to 15th November 1991. It is the decision of the court that the Respondent be condemned in costs. It is ordered that the Respondent do pay the Applicants costs pursuant to Section 11(1) of the Industrial Relations Act.

The Assessors have concurred.

M. S. BANDA

INDUSTRIAL COURT PRESIDENT

20/11/91