

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 73/2000

In the matter between:

JOHANNES MBEMBEMBE SIKHONDZE

APPLICANT

And

THE SWAZI NATIONAL TREASURY

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. M. MAHLALELA:

FOR APPLICANT

NO APPEARANCE:

FOR RESPONDENT

JUDGEMENT

8/12/00

The applicant has brought this application seeking compensation for unfair dismissal, notice pay, additional notice, severance allowance and unpaid wages. There was no appearance for the respondent on the date of the hearing and application by the applicant to proceed *ex parte* was granted.

The applicant testified in support of the application. In brief his case was as follows:

Applicant stated that he was employed by the Swazi National Treasury on the 1st November 1983 as Ndabazebantu. He remained in continuous employment of the respondent until 1997 when he was wrongfully, unlawfully and unprocedurally dismissed by respondent.

According to applicant he was dismissed by the respondent on the ground that he had been arrested but subsequently acquitted and discharged by a competent court. Applicant was in police custody and could not report for work.

There is the report of dispute filed by the Labour Department in court - in terms of Section 41 of the Employment Act. At the conciliation meeting respondent was represented by Andreas Fakudze. Fakudze stated that applicant was a royal appointee and as such he could be replaced. According to Mr. Fakudze, there are no staff regulations at the Swazi National Administration and the Employment Act, 1980 is not applicable in the case.

Mr. Fakudze further stated that the finger which appointed applicant's replacement was the very same finger which fired applicant following the murder charge. Further that if one was appointed by the King there were no terms and conditions of his employment.

What respondent is saying here is against the spirit of the Employment Act. The object of the Employment Act is to improve the status of employees in Swaziland. Applicant was an employee falling under Section 35 of the Employment Act.

The argument that applicant had no terms and conditions of service cannot stand.

Respondents decided not to oppose this application. The evidence by the applicant remains uncontroverted. The applicant has proved that he was an employee in terms of Section 35 of the Employment Act and that he was dismissed by respondent.

The onus rests on respondent to show that such dismissal was fair and reasonable. The respondent has failed to discharge its onus under Section 42 of the Employment Act.

Consequently we find that the applicant was substantively and procedurally dismissed unfairly. In determining the amount of compensation to award to applicant we have considered the following:-

1. Applicant was employed since November 1983.
2. He earned E1,000- per month.
3. There is nothing to show that he contributed to his dismissal.

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4. This is not an appropriate case for re-instatement because respondent told the Labour officer during conciliation that the applicant had been replaced. Secondly, the stigma of a murder charge cannot serve the interest of justice taking into consideration the nature of the job he was doing at the National Treasury (Administration).

He is therefore, awarded six months salary as compensation for unfair dismissal in the sum of
E 6,000-

1.	Notice pay	1,000-
2.	Additional notice	1,500-
3.	Severance pay	4,000-
	Total	E12,500-

This amount shall be paid on or before 15 January, 2001.

No order as to costs.

Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)