IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE	CASE NO.188/2000
In the matter between:	
HANSON NGWENYA & 68 OTHERS	APPLICANTS
and SWAZI OBSERVER (PTY) LTD	RESPONDENT
CORAM	
KENNETH NKAMBULE:	JUDGE
DAN MANGO:	MEMBER
GILBERT NDZINISA:	MEMBER
FOR APPLICANT:	MR. P.R. DUNSEITH
FOR RESPONDENT:	MR. L. MAMBA

JUDGEMENT

23/08/02

The applicants in this application seek payment of 24 months maximum compensation for unfair dismissal in the sum of E2,952,427.20 (Two million nine hundred and fifty two thousand four hundred and twenty seven Emalangeni and twenty cents).

It is common cause that the applicants were employed by the respondent in the respective positions and the respective dates set out besides their names in the schedule of applicants annexed to the application and were in the continuous employ of the respondent thereafter until the 18th February, 2000.

It is common cause further that on the 18th February 2000 the respondent summarily terminated the services of the applicants on the ground of redundancy.

The applicants aver that the termination of their services was unlawful, wrongful, unfair and unreasonable in all the circumstances.

Applicants state that the dismissal was in contravention of the Employment Act, 1980 and the Industrial Relations Act, 1996.

Secondly, they state that they were not afforded a hearing prior to the unilateral stoppage of the respondent's operations and closure notwithstanding the adverse effects, the said stoppage and closure had on the lives of the applicants.

Thirdly, that there was no prior consultation over the issue of redundancy either with the union recognised by the respondent or with the individual employees.

It is common cause that on the 9th March, 2000, the respondent's representatives and SMEPAWU held a meeting in which was agreed between the parties on the terminal benefits payable to the applicants. The said terminal benefits were paid to the applicants.

Paragraph 3.3 at page 3 of the minutes of the meeting of the 9th March 2000 states that the issue of compensation for unfair, dismissal was to be settled by the Industrial Court.

The respondent has raised two defenses viz -

That the applicant's claim for compensation for unfair, dismissal was fully and finally settled in terms of a memorandum of agreement dated 10th April, 2000.

Secondly, that the services of the applicants were lawfully terminated in terms of Section 36 (J) of the Employment Act on grounds of redundancy and that the respondent "was entitled and indeed bound to cease operations because of financial difficulties".

Respondent has submitted that the conduct of the parties who signed the agreement is evidence that they intended to fully and finally settle all issues arising from the closure. They therefore, contend that it was the intention of the parties to settle even the issue of compensation.

This contention was however, denied by AW2 Mr. Hanson Ngwenya. This witness produced the minutes of the negotiation meeting of the 9th March 2000 which show that the parties intended that any claim for unfair dismissal shall be determined by the Industrial Court.

Mr. Mamba for the respondent submitted that the applicants were not bona fide in filling the matter. He said this is borne by the fact that they failed to call Hlophe and Gama who were their representatives in the negotiations. He says these witnesses would have stated whether the issue of unfair dismissal was settled or not.

In terms of the agreement, the respondent undertook to pay certain terminal benefits arising out of the stoppage of operations of the Swazi Observer Newspaper and the subsequent termination of all employees in the employ of the company.

The terminal benefits payable are detailed and paragraph (3) of the agreement states that "The payment of the above named terminal benefits represents a final payment of such benefits ".

The 24 months maximum compensation for unfair dismissal is not among the listed benefits. The agreement does not refer to claims for compensation for unfair dismissal. It does not state that it is in full and final settlement of any other claims, which the employees may have against the employer.

Annex "A 16" speaks with sufficient clarity. It does not leave anything to doubt. This court finds that all the listed issues, save for the issue of maximum compensation for unfair dismissal were resolved. As a consequence this court will not allow any extrinsic evidence. Annex "A 16" is the only embodiment of the agreement between the parties.

This court has to determine whether the 69 applicants were fairly terminated in terms of Section 36 of the Employment Act. The respondent is required to prove that the services of the applicants had been fairly terminated.

In order to do so the respondent must plead and prove:

(i) That the reason for the termination is one permitted by Section 36 of the Employment Act; and