

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 230/2002

In the matter between:

DUMISA DUBE

APPLICANT

and

SIMON KUNENE (PROGRESS MANAGER)

1st RESPONDENT

PRINCIPAL SECRETARY MIN. OF HEALTH

2nd RESPONDENT

THE ACCOUNTANT-GENERAL

3rd RESPONDENT

THE ATTORNEY-GENERAL

4th RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

FOR APPLICANT:

S. MDLADLA

FOR RESPONDENT:

S. KHULUSE

RULING

6/12/02

The applicant has brought an application for an order:

- (a) Waiving the usual requirements of the rules of court regarding notice and service of application in view of the urgency of the matter.
- (b) That the respondent be ordered to reinstate the applicant to the pay roll and be paid his salary forthwith.
- (c) That the respondents be ordered to pay the applicant his monthly salary since the year 2000.

1

- (d) That respondent pay costs of the application. There is filed of record a launching affidavit in support of the application.

The respondent has filed an answering affidavit in which objections in limine have been raised:-

At resumption of the hearing the respondent decided to abandon the objections. The matter was heard on merit.

Applicant's affidavit states that in 1999 he fell sick and was taken for treatment. After getting better he returned to work, Unfortunately he fell sick again and had to be away from work once again. He was

admitted at Raleigh Fitkin Memorial Hospital. On his discharge he was forced to stay at home as he was still sick.

According to applicant he returned to work on February 2000. On arrival at work he was advised by 1st respondent that he no longer needed the applicant and that he should go back to the headquarters in Mbabane.

Applicant then went to the headquarters and told the Principal Secretary who told him that he had not received any correspondent from the 1st respondent, and as such he could not do much about the situation.

Later on applicant's salary was stopped.

According to the affidavit of respondent deposed to by the principal personnel officer William M. Qwabe, applicant disappeared from work in July 1999 and resurfaced on the 29th February 2000 in the company of his mother who indicated that she had brought applicant to work.

According to the principal personnel officer, applicant's mother told them that the applicant had disappeared from his residential place and his whereabouts unknown to everyone and that she had taken it upon herself to look for him and that she eventually found him at a traditional healer's home where he was said to have arrived a week earlier.

This court has had occasion to go through the documents filed with the application. What is worthy of mention is the issue of the medical report. The medical report which the applicant relies on as proof that on the period

2

in question he was sick is dated 13th August 2001, and reflects that the applicant was a patient since April/May 2000. At paragraph 7 and 8 of his founding affidavit he alleges to have fallen sick in 1999 and went back the very same year. This medical report is inconsistent with the facts as stated in applicant's affidavit.

The medical report was issued by a doctor stationed at Mbabane Government Hospital. This is a mystery because according to applicant's affidavit he fell sick and was admitted at Raleigh Fitkin Memorial Hospital.

It is clear from papers before court that there are many disputes of fact arising from this application. It would be difficult to deal with it in this manner.

The application is therefore turned into trial proceedings.

No order as to costs.

Members concur.

KENNETH NKAMBULE

JUDGE - INDUSTRIAL COURT

3