

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO.187/2002

In the matter of:

ALFRED MAJAHONKE KUNENE

APPLICANT

AND

LUCKY'S BAR AND RESTAURANT

RESPONDENT

CORAM:

NKOSINATHI NKONYANE : A-J

GILBERT NDZINISA :

MEMBER

DAN MANGO :

MEMBER

FOR APPLICANT :

SELBY DLAMINI

FOR RESPONDENT :

NO APPEARANCE

JUDGEMENT

10 SEPTEMBER 2004

This is an unopposed application brought by the Applicant against the Respondent. The Applicant is seeking an order for re-instatement with payment of arrear monthly wages, or alternatively, maximum compensation for unfair dismissal; notice pay; additional notice pay; severance allowance and payment of annual leave days for three years.

The Applicant told the court that he was employed by the Respondent as a security guard on 15 December 1999, until he was summarily dismissed on 18 May 2002.

The Applicant was being paid E540:00 per month. On 18 May 2002 the Applicant together with four other employees went to the cold room to get more liquor to serve in the bar. The Applicant was the one who got into the cold room and passed on the cases of liquor to his colleagues who were standing outside.

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The owner of the business then complained that the cases of liquor were not properly stacked or arranged, and he scolded the Applicant and insulted him. The owner told the Applicant to go to his office where he paid him for the eighteen days that the Applicant had worked and dismissed him.

The evidence also showed that the Applicant was being underpaid as he was being paid E540:00, whereas in terms of The Regulation of Wages (Hotel and Catering Trades) Order, 2002, under Legal Notice No.73 of 2002, he was supposed to be paid E615:00 per month.

The Applicant said he was not willing to go back to the Respondent's employ as might be a target of the owner of the business' scorn. He told the court that at one point the Respondent caused the police to investigate him for keys that got lost when he had already left the Respondent's employ. He said the relationship with the Respondent became sour.

The Applicant's evidence was unchallenged and was the only evidence before the court. Even though the underpayment does not appear as one of the claims in the Applicant's prayers, it does however appear in the certificate of unresolved dispute, which shows that it was addressed during conciliation. It is clear to the court that it was inadvertently left out. That is more so because even the calculations

of the Applicant's claims were based on the correct amount of E615:00, and not on the sum of E540:00 which was an underpayment.

In the light of the foregoing observations the application will succeed and the court will make an order that the Respondent pays the Applicant all his terminal benefits and maximum compensation for unfair dismissal and also the underpayments as follows;

Notice pay-----E615:00

Additional notice-----E94:62

Severance allowance----- E236:54

Payment of annual leave days

for three (3) years-----E746:00

Underpayments (April 1999 to May 2002)

Twenty four months times E75:00 per

Month-----E1,800:00

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Maximum compensation for unfair

Dismissal (12 times E615:00)-----E7,380;00

TOTAL E10,871:26

The court will make no order for costs. The amount is to be paid within seven days from the date of judgement.

The members are in agreement.

NKOSINATHI NKONYANE

ACTING JUDGE- INDUSTRIAL COURT

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