

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 78/02**

In the matter between:

**VUSI MASUKU**

**APPLICANT**

And

**SWAZI SPA HOLDINGS**

**RESPONDENT**

**CORAM:**

**NKOSINATHI NKONYANE:**

**JUDGE**

**DAN MANGO:**

**MEMBER**

**GILBERT NDZINISA:**

**MEMBER**

**FOR APPLICANT:**

**M. MKHWANAZI**

**FOR RESPONDENT:**

**J.N. HLOPHE**

**JUDGEMENT 27.09.07**

[1] The applicant is a former employee of the respondent. He started to work

for the respondent on the 1<sup>st</sup> August 1981 when he was employed as a Billing Clerk.

[2] He worked continuously for the respondent until 16<sup>th</sup> September 2000 when he was dismissed. At the time of his dismissal he was occupying the position of Night Auditor and was earning a gross salary of E2,119.23.

[3] His dismissal followed a disciplinary hearing in which he was found guilty on two charges of dishonesty involving the sums of E4,985.25 and E500.00 respectively. He appealed, but was unsuccessful. He reported a dispute with the Conciliation, Mediation and Arbitration Commission ('CMAC'). The dispute was not resolved, thus he instituted the present proceedings before the court.

[4] In his papers the applicant claims that he was unfairly dismissed both substantively and procedurally because:

4.1. He was not given time to prepare for his defence.

4.2. The evidence adduced at the hearing was insufficient, not cogent and unreliable to warrant his dismissal.

[5] He is claiming the following amounts;

5.1	<b>Notice pay</b>	<b>E 1,564.01</b>
5.2	<b>Severance allowance</b>	<b>E 9,360.00</b>
5.3	<b>Maximum compensation</b>	<b>E37,536.00</b>

[6] The respondent in its reply denied that the applicant was unfairly dismissed. The respondent stated in its papers that the applicant's dismissal was fair and reasonable in all the circumstances of the case and that it was for reasons contemplated by Section 36 of the Employment Act as he was found guilty for having committed acts of dishonesty.

[7] The evidence led before the court revealed that the applicant's duties as Night Auditor included banking of the undertaking's daily collections. The banking was done in two stages, namely, internally and externally. Internal banking involved the receipt of the revenue from the various departments and keeping such in a safe within the respondent's premises. The applicant was the only one who kept the key of the safe. External banking was the act of actually taking the money to the local banks, in this case it seems the respondent was using Standard Bank.

[8] The applicant was supposed to extract the figures of the amounts collected on each day from the computer, which was installed with a system called fidelio. Each employee had his or her own password, but the applicant told the court that they sometimes used each other's password to get into the computer system.

[9] Two incidents of fraud occurred at the respondent's place. One involved the sum of E4,985.25 and the other involved the sum of E500.00. As regards the sum of E4,985.25, the evidence showed that the Rotary Club of Mbabane held a function at the respondent's place in October 1999. They were charged at cost a sum of E4,985.25. They eventually paid by cheque in March 2000. The cheque was never posted through the fidelio system even though it was banked by the applicant on the 17<sup>th</sup> March 2000. The cheque did not appear on any of the daily banking summaries. As the cheque did not appear on any of the bank summaries for the 15, 16 and 17 March 2000, it was clear that cash of the value of the cheque was taken by someone and substituted by the cheque so that in the end the figures balanced.

[10] The applicant when asked to explain how did this happen, he said he did not follow the fidelio system and that he had his shorter ways of doing things efficiently. The applicant further told the court that there were no regulations in place at the respondent's place as to how he should go about doing the banking. It seems to the court there were indeed no written regulations at the respondent's place as to how he should go about doing the banking as none were produced in

court. When it was put to Rwl, Mazwi Mango that there is no written policy on banking at the respondent's place, he said he was not sure.

[11] The applicant did not deny the overwhelming evidence that someone interfered with the cheque in circumstances that clearly showed that individual substituted the cheque for cash. His defence was that it has not shown that it was him who did that. The respondent had a burden to prove that it was the applicant who committed the act of dishonesty. The burden of proof is not proof beyond any reasonable doubt, but a preponderance of probabilities. The evidence before the court showed that the applicant was the last person to handle the money at the respondent's place before it was taken to the bank. He was the only one who kept the keys to the safe. He was therefore the only person who had the opportunity, as he was the only one responsible for the daily banking.

[12] From the foregoing evidence, the court comes to the conclusion that the respondent has managed to prove on a balance of probabilities that the applicant did commit an act of dishonesty by removing the cash sum of E4,985.25 and putting in the cheque of E4,985.25.

[13] The second act of dishonesty involving the applicant related to the sum of E500.00. The evidence before the court showed that the applicant made two transactions called "paid outs" relating to two guests who had booked at the hotel. The evidence revealed that when the "paid outs" of E470.00 and E30.00 were made the guests had already left and there was therefore no justification for these cash "paid outs".

[14] It seems that with this second count, the applicant was involved together with another employee of the respondent, who also faced similar charges and was dismissed, by the name of Lawrence Dlamini. The applicant's defence was that other employees were able to use his user name and that these transaction may have been done by them. He also told the court that these transactions were reversed by the Front Office Manager. This was however shown to be false by

RW1 Mazwi Mango.

[15] The applicant's defence that other employees were able to use his user name is not acceptable to the court. If the applicant allowed other employees to use his user name he did so at his own risk. If indeed that was so the applicant ought to have reported those employees to management and refused to take the blame for something he did not do. The applicant also told the court that this charge was dropped at the appeal stage. RW2, Brent Hammond who was the chairperson however denied that. He told the court that he confirmed the convictions and sentence.

[16] On the procedural aspect, the applicant said he was not given enough time to prepare for the hearing. The documentary evidence before the court revealed that he was served with a notice of a disciplinary enquiry on 3 October 2000. The disciplinary hearing commenced on 10 October 2000. The court is of the view that seven days was sufficient to allow the applicant to prepare himself.

[17] The applicant also told the court that he was not given a chance to challenge the respondent's evidence against him. This was clearly not correct as the record of the proceedings shows that he asked to refresh his memory about the fidelio system. The chairperson granted the request. On the agreed day however the applicant did not show up. When the hearing resumed on 16<sup>th</sup> October 2000, he did not ask to be given another chance, nor did he say why he did not show up.

[18] Taking into account all the evidence before the court, the court comes to the conclusion that the respondent has proved on a preponderance of probabilities that the applicant was terminated for dishonesty as envisaged by Section 36 of the Employment Act and that taking into account all the circumstances of the case, it was reasonable to terminate his service.

[19] The application is accordingly dismissed with no order as to costs.

The members agree.

**NKOSINATHI NKONYANE**  
**JUDGE - INDUSTRIAL COURT**