

IN THE INDUSTRIAL COURT OF SWAZILAND

Case No.292/01

In the matter between:

THOLAKELE NKAMBULE

Applicant

And

MAHLANGATSHA COMMUNITY

FORESTRY DEVELOPMENT ASSOCIATION

Respondent

CORAM:

S. NSIBANDE : Acting Judge

P. THWALA: Member

A.M. NKAMBULE: Member

Z. Dlamini: For Applicant

No appearance: For Respondent

JUDGEMENT - 16th SEPTEMBER, 2008

- 1] This is an application for determination of a dispute certified by the Conciliation Mediation and Arbitration Commission as unresolved on 15th December, 2006.
- 2] The Respondent was not before court nor was it represented. The Court, being satisfied that the Respondent had been duly served with the application before it, ordered that the trial proceed.
- 3] The Applicant testified that she was employed by the Respondent as a secretary in April 2001. Her duties involved preparing monthly reports for the Respondent and taking minutes at meetings of the Respondent. Occasionally she would be required to receive and receipt money on behalf of the Respondent. However there was treasurer whose responsibility it was to deal with money. She earned

4] The Applicant testified that in April, 2005 she was dismissed after being told that some money had gone missing at the Respondent's offices. The chairperson of Respondent Ncoyi Dlamini called the Applicant and other employees to a meeting, advised them that E200,000.00 (two hundred thousand Emalangeni) had been lost by the Respondent and that they should leave and surrender the office keys. Applicant and the Manager, a Mandla Sibandze were thus summarily dismissed.

5] The Court finds that the Applicant was an employee to whom **Section 35 of the Employment Act 1930** applied. The Respondent bears the onus of proving fair reason for her dismissal. No such reason has been given or shown, by reason of Respondent's default in appearance. In terms of the **Employment Act 1980** an employee can only be dismissed for a reason set out in section 36 of the act. The Applicant in this matter says she was not charged with any offence but simply told that an amount of E200,000.00 (two hundred thousand Emalangeni) had been lost by the Respondent and she was being dismissed.

6] In the absence of any evidence from the Respondent which established a fair reason for the dismissal of the Applicant, we find that her dismissal was substantively and procedurally unfair.

7] The Applicant is entitled to payment of her terminal benefits and compensation for unfair dismissal. She is also entitled to payment in lieu of leave days due to her being 42 days. The Applicant does not seek reinstatement. No evidence of underpayment was led and the court finds that the claim for underpayments was not proved.

8] The court has taken into account the Applicant's personal circumstances, she is married with four school going children, she has been unable to obtain alternative employment and her dismissal without the establishment of guilt on her part for the "lost money" was excessive in the extreme.

9] Judgement is entered against the Respondent for the payment of the following amount.

Notice Pay	E800.00
Additional Notice	E436.00
Severance allowance	E1 090.00
Leave pay (42 days)	E1527.12

12 months wages as compensation for unfair dismissal	<u>E9600.00</u>
	E13453.12

The Respondent is to pay the Applicant's costs.

The members agree.

S. NSIBANDE
ACTING JUDGE