

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 421/05

In the matter between:

MSWELANTFO TSABED2E

APPLICANT

And

CITY COUNCIL OF MBABANE

RESPONDENT

CORAM:

NKOSINATHI NKONYANE DAN

JUDGE

MANGO GILBERT NDZINISA

MEMBER

MEMBER

**FOR APPLICANT
FOR RESPONDENT**

**F. NTSHALINTSHALI
Z.D. JELE**

JUDGEMENT 25.05.09

[1] The applicant has applied to court for determination of an unresolved dispute between him and the respondent in terms of the Industrial Relations Act, 2000 (as amended).

[2] The applicant is a former employee of the respondent. He was dismissed by the respondent on 30.05.05 after he was found guilty by the chairman of the disciplinary hearing held against him at the workplace. The applicant was facing a charge of making defamatory statements against the Chief Security Officer and another employee of the respondent.

[3] The applicant claims that his dismissal was substantively and procedurally unfair. The applicant stated in his papers further that

there was no evidence led that linked him with the specific charges preferred against him.

[4] The respondent in its reply denied that the dismissal of the applicant was substantively and procedurally unfair. The respondent stated that the applicant was dismissed after a duly constituted disciplinary enquiry found him guilty of insolence, insubordination and making defamatory statements against his superior.

[5] The evidence led before the court was short and simple. The applicant clearly had no genuine defence to the charges levelled against him except to make bare denials. The evidence showed that the applicant was employed by the respondent as a Municipal Police or Ranger. He was reporting to RW1, Matthews Nkambule, the respondent's Security Operations Supervisor. RW1 was reporting to RW2, Sabelo Godwin Mbingo, the respondent's Chief Security Officer. The applicant's immediate supervisor was RW3, Zinhle Msibi. The applicant and Zinhle Msibi were not having a good working relationship during the time relevant to this case.

[6] The respondent internally advertised posts of Senior Assistant Supervisors. Zinhle Msibi and AW3, Andy Dlamini were some of those who applied. Zinhle Msibi was appointed. Some Municipal Police/Rangers including AW3 and the applicant were not happy about the appointment of Zinhle Msibi. The applicant and AW3 were vocal about their dissatisfaction. These remarks and the conduct of the applicant and AW3 led to a breakdown of discipline among the Municipal Police/Rangers, a situation that did not augur well for the reputation and image of the respondent.

[7] The applicant went further than just to complain and made defamatory statements against RW2 about how Zinhle was appointed. The applicant would make these unsavoury comments during meetings and during the parade. It virtually became impossible for Zinhle

Msibi to execute her duties and she asked for a transfer to another department. The applicant made allegations that Mbingo was having a secret affair with Zinhle and that was why she got the job. The applicant also said that Mbingo recruited Zinhle over the weekend during the night.

[8] These were serious allegations of impropriety and corruption by the applicant against the Chief Security Officer. The Chief Security Officer did explain in one meeting that he had nothing to do with the appointment of Zinhle. The Chief Security Officer also explained that he was not even part of the interviewing panel and that there was no way that he could have influenced the panel to appoint Zinhle. Despite the Chief Security Officer having explained the position, the applicant continued to openly make these accusations.

[9] Mbingo then reported the matter to RW1 as a formal complaint. The applicant was called by RW1 but he failed to substantiate the allegations that he was making against Mbingo. The applicant was then charged.

[10] The applicant's witnesses AW2 Dumsani Maseko and AW3 Andy Dlamini did not take the applicant's case any further. Their evidence was nothing but mere moral support for their dismissed former colleague. They had only come to court to deny that the applicant made the statements attributed to him. They continued to deny even in the face of clear and overwhelming evidence before the court. They had just come to court determined to show moral support for their former colleague even when this exposed them as liars and untruthful witnesses. The respondent's witnesses were impressive, truthful and forthright. The applicant dismally failed to successfully challenge their evidence.

[11] The applicant made serious defamatory statements against a

member of senior management of the respondent. He failed to substantiate the allegations during the disciplinary hearing and in court. Although the management had no duty to explain to the applicant how Zinhle was appointed as he was not a candidate as he had not applied for the post, the management did explain to him the whole process. Despite these efforts, the applicant continued to spread the false and malicious information that Zinhle was hired by Mbingo through corrupt means.

[12] Taking into account all the evidence before the court, the respondent has succeeded in discharging the burden of proof in terms of **Section 42(2)(a) & (b) of the Employment Act, 1980 as amended**, namely that the applicant was dismissed for a reason permitted by Section 36(L) and that taking into account all the circumstances of the case, it * was reasonable to terminate the service of the applicant.

[13] The applicant's application is accordingly dismissed. The court makes no order as to costs.

The members agree.