IN THE INDUSTRIAL COURT OF SWAZILAND

JUDGEMENT

CASE NO. 435/2013

In the matter between:

MUZI MAMBA **APPLICANTS**

and

CATCH SECURITY (PTY) LTD **RESPONDENT**

Neutral citation : *Muzi Mamba v Catch Security (PTY) LTD (435/2013)SZIC 31 (26 June 2015)*

CORAM : **DLAMINI J,**
*(Sitting with **D. Nhlengetfwa & P. Mamba** Nominated Members of the Court)*

Heard : **16 June 2015**
Delivered : **26 June 2015**

Summary: ***Labour law – Unfair Dismissal –*** *In unfair dismissal, the Employer has to show and prove that the dismissal was initiated following fair procedures [procedural fairness] and for a fair reason [substantive fairness].* ***Held:*** *Dismissal of Applicant in casu was procedurally and substantively unfair.*

1. Following the failure of the Respondent to make an appearance to defend this application of the Applicant, despite sufficient proof of service in terms of rule 6(3)(a), this Court directed that this matter proceed *exparte* at the request of the Applicant in terms of rule 19(1)(a). This now is the judgement of the Court in the matter.

2. Muzi Mamba is the Applicant in this matter and is a former employee of the Respondent company, Catch Security (PTY) LTD. The evidence of Mamba under oath was that he was employed by Catch Security (PTY) LTD as a Security Guard on 20 September, 2012. His services were terminated on 30 January 2013, without a lawful reasons. He stated further that on this 30 January, 2013, whilst on night duty, at his post at Lulama Clinic, he received a call in the middle of the night from his boss – a Mr. Thabo Dlamini – informing him that he should stop working at that very moment as his position had been become redundant. In as much as he was surprised by this sudden turn of events, he nonetheless requested that he be allowed to stay on until the next morning as it was already late at night. This Thabo Dlamini acceded to his request of leaving in the morning but emphasized that he must take all his belongings and never to return.

3. According to the Applicant, no reasons were forthcoming from his boss as to why his services were suddenly terminated except that the employer had declared the Lulama Clinic post redundant. He had not even been consulted prior to the termination of his services. However, Thabo Dlamini had promised to recall the Applicant should another post be available but that was never to be.

4. After about two weeks after the termination of his services, so the Applicant further testified, he went to his previous post at Lulama Clinic to satisfy himself that indeed his post had ceased to exist. But lo and behold, to his astonishment and utter dismay he discovered that there was now a new Security Guard in his post. To make matters worse, this Guard was from the same Catch Security, his previous employer. This then confused the Applicant as he had been informed that the position had become redundant. What further confused him was that he had never committed any misconduct that would have perhaps necessitated the termination of his services.

5. After this discovery, the Applicant then reported an unfair dismissal dispute with the Conciliation, Mediation and Arbitration Commission

(CMAC) for conciliation. Conciliation was however unsuccessful hence now the application for the determination of this dispute by this Court.

6. In terms of the law and specifically **Section 42 of the Employment Act 1980** the burden of proof is upon the employee to prove that at the time his services were terminated he was an employee to whom Section 35 applied. This, the present Applicant has successfully done. Section 42 does not end there. Upon the employer it bestows the burden to prove that the reason for the termination of the employee's services is one permitted by Section 36 of the same Act and further that taking into account all the circumstances of the case, it was reasonable to terminate the service of the employee. The burden of proving that there was a fair reason for dismissal is placed squarely on the employer's door. The duty of this court is then to determine whether the reason was valid or not. This requirement is fundamental in fair labour practices. In ***Earl V Slater & Wheeler (Airlyne) LTD [1973] 1 WLR 51 at 55*** it was held that;

> ***"It is for the employer to show that the principal or only reason for dismissal…and that it was a potentially valid reason…if the employer fails to discharge this burden the [Court] must find that the dismissal was unfair…"***

7. This Court has previously stated in a number of decisions that all cases of alleged unfair dismissal are assessed on the basis of two criteria – namely; substantive and procedural fairness. No dismissal will ever be deemed fair if it cannot be proved by the Employer, that it was initiated following fair procedures [procedural fairness] and for a fair reason [substantive fairness]. The substantive fairness of any dismissal is to be determined on the basis of the reasons on which the Employer relies for arriving at the decision that it no longer requires the services of the Employee and ultimately terminating his services. In this matter before us, the Applicant alleges that his services were unfairly terminated and since there was no appearance by the Respondent the assertions of the Applicant in this regard remain uncontroverted. In this regard therefore the Court returns a verdict that indeed the termination of the services of Muzi Mamba by the Respondent, Catch Security (PTY) LTD was both procedurally and

substantively unfair. There was no consultation prior to this arbitrary decision to terminate his services. There were no substantive reasons to even justify the termination and the procedural aspect of same is wanting.

8. From the evidence of the Applicant it is without doubt that he was being grossly exploited by the Respondent employer. He was being underpaid in total disregard to the minimum wage he was entitled to in terms of the Security Industry gazette. The Court cannot ignore the fact that since his dismissal he has failed to secure alternative employment. He is a married man with four (4) minor children. That the Applicant belongs to the lower rank of employees in the employment chain should not be a licence to be treated with such disdain and contempt. He should also be guaranteed the security of tenure of his position no matter its ranking!

9. The claims of the Applicant are as follows;

a) Notice pay	-	E1, 000.00
b) Underpayments	-	E1, 453.76
c) Maximum Compensation	-	E21, 056.88

The Court though, having taken into account all the uncontroverted evidence of the Applicant, the manner in which his services were arbitrarily terminated, his personal circumstances including the fact that to date hereof he still has not secured alternative employment, enters judgment in favour of the Applicant as follows;

a) Notice pay	-	E1, 000.00
b) Underpayments	-	E1, 453.76
c) 8 months compensation for unfair dismissal.	-	E11, 630.08
	Total	**E14, 083.84**

d) The Respondents is also ordered to pay the Applicant's costs of suit.

The members agree.

T. A. DLAMINI
JUDGE – INDUSTRIAL COURT

DELIVERED IN OPEN COURT ON THIS 26th DAY OF JUNE 2015.

For the Applicant : Attorney M. Nkomondze (Nkomondze Attorneys)
For the Respondent : No Appearance.