



IN THE INDUSTRIAL COURT OF ESWATINI

HELD AT MBABANE

CASE NO: 483/2007

In the matter between:

SHADRACK MASEKO

APPLICANT

And

MASUNDVWINI DAIRY FARM

RESPONDENT

Neutral citation : *Shadrack Maseko vs Masundvwini Dairy Farm*
[483/2007] [2018] SZIC 50 (15 June 2018)

CORAM:

BONGANI S. DLAMINI : **ACTING JUDGE**

DAN MMANGO : **MEMBER**

NKHOSINGIPHILE DLAMINI : MEMBER

DATE HEARD : 11 JUNE 2018

DATE DELIVERED : 15 JUNE 2018

Summary: Labour Law- Ex parte Application for determination of unresolved dispute- Applicant alleging that his services were unfairly terminated by the Respondent- Applicant's evidence undisputed due to employer's failure to attend Court proceedings.

Held; The Applicant's evidence meets the standard required for a grant of the relief sought – Application accordingly granted.

JUDGEMENT

Introduction

1.0 The present application is one for a determination of an unresolved dispute in terms of Section 85 (2) of the Industrial Relations Act 2000 (as amended). This section provides that;

“If the unresolved dispute concerns the application to any employee of existing terms and conditions of employment or the denial of any right applicable to any employee in respect of his dismissal, employment, reinstatement or re-engagement of any employee either party to such a dispute may make an application to the Court for determination of the dispute, or if the parties agree, refer the matter to the Commission for determination.”

2.0 In the context of labour disputes, an application in terms of Section 85 (2) of the Industrial Relations Act 2000 (as amended) is the equivalent of a summons and once the pleadings are closed, the matter is referred to trial where all the parties are expected to present oral, documentary or other legally acceptable evidence in support of their version respectively.

3.0 The present application, though initially opposed by the Respondent through filing of the normal opposing papers, was however not opposed at the trial stage.

- 4.0 Prior to directing that the matter be referred to trial on an *ex parte* basis, the Applicant's Representative was directed to prepare a notice of set down and have same served on the Respondent by a competent Deputy Sheriff.
- 5.0 The 'return of service' indicates that the notice of set down for trial was served by one Mr. Muzi Mamba who describes himself as a Deputy Sheriff for the Manzini District, duly appointed on the 1st December 2017 in terms of Section 4 (1) of the Sheriff Act of 1902 upon Mrs Mkhonta who is a Secretary to the Chief Executive Officer.
- 6.0 The Respondent was thus clearly aware that the matter will be proceeding for trial on the date indicated in the notice of set down but elected not to attend court in order to present its version of the events leading to Applicant's dismissal.

Applicant's testimony

- 7.0 The Applicant's testimony was that he was employed by the Respondent on the 1st December 2003 and had his services terminated on the 13th December 2006.

8.0 The Applicant stated that on employment, he was working under one Mr Hank who was the Farm Manager and they worked in harmony until the latter left the Respondent's employment. After Mr. Hank left the organization, another Farm Manager in the name of Dr. Mostafa Imam was engaged to manage the Dairy Farm on behalf of the Respondent.

9.0 The Applicant gave testimony on a long list of ill-treatment incidents at the hand of Dr. Mostafa. The Applicant stated that at one point whilst working under the supervision of Dr. Mostafa, the latter had sought to administer medication to 10 cattle kept at the farm only to discover the following day that all the cattle had died. The Applicant's testimony was that Dr. Mostafa had used the wrong medication on the cattle and that he had observed an over-dosage on the medication used by Dr. Mostafa.

10.0 According to Applicant's testimony, after noticing the dead animals, Dr. Mostafa approached him and told him not to disclose to management on what had happened to the cattle. However when management sought an explanation on what had caused death on the

- cattle, the Applicant told management on what had happened to the cattle.
- 11.0 The Applicant's testimony was that his disclosure to management on what had caused the cattle to die was the beginning of his problems at the work station in the hands of Dr. Mostafa. According to the Applicant, several attempts were tried by Dr. Mostafa to have him dismissed but all of these efforts proved futile.
- 12.0 In August 2005, the Applicant was then transferred by Dr. Mostafa to the Echibini Project which was another business venture pursued by the proprietors of the Respondent. The Applicant's testimony was that whilst based at the Masundvwini Dairy Farm, his responsibilities were mainly those of dairy farming and calf breeder. However when the Applicant was transferred to the Echibini Project, he was given the responsibility to be a Security Guard.
- 13.0 The Applicant's testimony was that whilst stationed at the Echibini Project, he kept a note book in which he would record all the events or activities taking place. One of such recordings in his note book was that Dr. Mostafa had come at one point and had taken a battery

belonging to one of the tractors. The Applicant stated that Dr. Mostafa took the note book from him in order to conceal this fact.

14.0 It was also the Applicant's testimony that upon transferred to the Echibini Project, he was made to work 12 hours instead of the normal 8 hours he used to work at Masundvwini Dairy Farm. The overtime worked by the Applicant at the Echibini Project was from August 2005 up to February 2006. The Applicant presented in evidence, a time sheet of the overtime worked as well as the specific calculations thereon.

15.0 On the 11th September 2006, the Applicant was charged with the offence of insubordination in that he defied management's instructions to complete the attendance register; overruled management's instructions; verbally attacked the manager and walked away while uttering disrespectful words against the said manager.

16.0 During the internal disciplinary hearing, the Applicant was found guilty and had his services terminated on the 12th December 2006. The Applicant denied having engaged in any of the conduct attributed to him by his employer on the single charge of insubordination and

attributed the charge leveled against him to the bad blood between himself and the Farm Manager, Dr. Mostafa.

Analysis of evidence and the applicable law

17.0 The evidence presented by the Applicant clearly shows that he was an employee to whom **Section 35 (1) of the Employment Act 1980** applied.

18.0 In dismissal proceedings, the onus is on the employer to show that the dismissal was fair and reasonable as set out in Sections 36 and 42 of the Employment Act, 1980. In this regard, Grogan J, Workplace Law (9th Ed) at p.123 states that;

“Proof that the dismissal was fair requires the employer to prove on a balance of probabilities that the employee in fact committed the misconduct, or was incapacitated to the degree alleged, as the case may be. The employer must also prove that it complied with the procedural requirements of the type of dismissal concerned... the primary significance of the onus is that when the evidence on a point is evenly balanced or indecisive, the balance will tip against the party upon whom the onus rests.”

19.0 We are satisfied that the Applicant was able to discharge the onus resting on him which was simply to demonstrate that his services were terminated by the Respondent. The undisputed evidence of the Applicant also shows that the dismissal was unfair and unreasonable in the circumstances of the case.

20.0 The Applicant's evidence on his entitlement to overtime is also satisfactory and we accept it as proper and lawful.

21.0 In conclusion we find that the Applicant has made out a case of unfair dismissal and must be compensated accordingly.

The court accordingly makes the following orders;

a) The Respondent is ordered to pay to the Applicant compensation as follows;

(i) Notice Pay in the sum of E 1,125.00

(ii) Additional Notice in the sum of E 346.15

(iii) Severance Pay in the sum of E 865.38

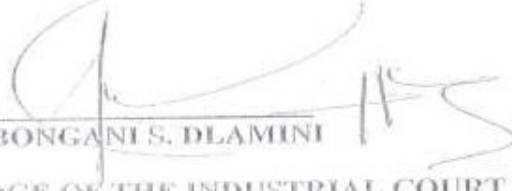
(iv) Overtime claim in the sum of E 2,375.00

(v) 10 months' compensation in the sum of E 11,250.00

b) The Respondent is ordered to pay the total sum of money due to the Applicant within 30 days of receipt of this judgement.

c) There is no order as to costs.

The members agree.


BONGANI S. DLAMINI
ACTING JUDGE OF THE INDUSTRIAL COURT

For Applicant:

*Mr. E. Dlamini (Labour Law
Consultant)*

For Respondent:

No appearance