



**IN THE INDUSTRIAL COURT OF ESWATINI**

**HELD AT MBABANE**

**CASE NO. 109/2020**

In the matter between:

**ELIZABETH DLAMINI**

1<sup>st</sup> Applicant

**MICHAEL MNCINA**

2<sup>nd</sup> Applicant

**And**

**CRIME STOP SECURITY SERVICES  
(PTY) LTD**

Respondent

**Neutral Citation**

Elizabeth Dlamini and Another Vs Crime Stop  
Security Services (PTY) Ltd [109/2020] SZIC 97  
[07 August 2020]

**Coram**

**Manene Thwala -Acting Judge**

(Sitting with Ms. N. Dlamini & Mr. D. Mmango  
Nominated Members of the Court)

**Date Heard** 16<sup>th</sup> July, 2020

**Date Delivered:** 7<sup>th</sup> August 2020

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## JUDGEMENT

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### **Nature of the application**

[1] This is an application for the determination of an unresolved dispute brought by the Applicants against the Respondent. The application is unopposed following that the Respondent did not appear to file its Replies despite proper service of the application having been effected upon it.

### **The Parties**

[2] The First Applicant is Elizabeth Dlamini, an adult female LiSwati of Pigg's Peak in the Hhohho region.

[3] The Second Applicant is Michael Mncina, an adult male LiSwati also of Pigg's Peak in the Hhohho region.

[4] Essentially both Applicants hail and/ or originate from Pigg's Peak in the Northern I-Thohho Region of Eswatini. Most pertinent to this matter is the fact that both Applicants are former employees of the Respondent.

[5] The Respondent is Crime Stop Security Services (Pty) Limited, a private company duly incorporated and registered in terms of the company laws of the Kingdom of Eswatini, with its head office located at the Hub Shopping Mall in Manzini as more fully appears on the Deputy Sheriffs Return of Service as filed with this Court.

### **Background**

[6] The Applicants instituted these proceedings on April 24th, 2020 in this Court. The Respondent was served with the application on April 28th, 2020 in terms of which it was called upon to attend before Court on May 28th, 2020 at 0930hrs and to thereat deliver its Replies to the application in six (6) copies, if it intended to oppose the application.

[7] It was further advised, through the application, that if it failed to appear on the said date, judgement by default may be entered against it after the leading of such evidence as the Cami may deem necessary, without notice to it.

[8] In the Court file there is a Return of Service which indicate that the application was served upon the Respondent on April 28<sup>th</sup>, 2020, by one Musa K. Sukati,

the Deputy Sheriff for the Manzini Region.

[9] The Respondent did not appear on the appointed date, i.e May 28<sup>1</sup>\ 2020, and the Applicant's Representative then made an application for the leave of this Court to have the matter proceed as an **ex parte** trial. Being satisfied with the proof of service upon the Respondent and the fact that Respondent was at all times aware of this matter but elected not to file its Replies nor to attend Comt in order to present its version of the events leading to the Applicants' respective claims, the Comt granted the relief.

#### **Applicants' testimony**

[10] To prove their respective claims against the Respondent, each of the Applicants gave oral evidence in which they told the Cou1t that they were both employed by the Respondent as security guards with effect from April 8, 2018, and that they were employed to provide security services to the KOBWA offices near the Maguga Dam in the Hhohho Region.

[11] It was Applicants' evidence that they remained in continuous employment with the Respondent until their services were terminated by way of verbal

communication which was individually given to them by Respondent's Security Supervisor on October 31, 2018. The Supervisor further directed Applicants to return and surrender the company's uniform at the Respondent's offices situated within KOBWA premises.

[12] Applicants told the Court that at the time of the termination of their employment they were each earning a gross salary of E2 300.00 per month.

[13] It was Applicants' further testimony that when the Respondent terminated their employment, the latter did not pay them a portion of their wages for the month of October 2018, as well as other terminal benefits accruing to them by virtue of their employment to the Respondent.

[14] It was on that basis that each Applicant individually prayed for judgement in the total amount of E3, 380.52, made up as follows:

14.1 Unpaid Holiday pay (7 days x E88.86) = E622.02;

14.2 Leave pay (7 days x E88.86) = E622.02;

14.3 Notice pay (14 days x E88.86) = E1, 244.00;

14.4 Off Days (4 days x E88.86) = E355.44; and the

14.5 Balance of October salary (E2, 300 - E1, 658) = E537.00.

[15] In the course of Applicants' presentation of their oral evidence the Court raised a concern about the fact that Applicants' averments as contained in their founding affidavit lacked the sufficient particulars that are envisaged by the rules regarding pleadings. Specifically, Applicants had omitted to properly plead the circumstances (facts) giving rise to the amounts claimed. This technical mishap was, however somewhat cured by the Applicants themselves in their evidence who testified as more fully shown below.

#### **As to Unpaid holidays**

[16] Under this head, Applicants testified that seven (7) national public holidays were celebrated during the tenure of their employment with the Respondent and that they worked during all seven (7) of them with no payment for the same yet they ought to have been given double pay for same as per the relevant Wages Regulations. These holidays included:

- Good Friday;
- Easter Monday (**April**);
- National Flag Day (April 25);
- Workers Day (May 1);

- Ascension Day (May 21);
- King Sobhuza's Birthday (July 22);
- Umhlanga Reed Dance (August).

[17] Applicants further submitted that all these holidays fell within their tenure of employment with the Respondent. We note, in passing, that Applicants' list of public holidays is without the September the 6<sup>th</sup> holiday.

**As to Unpaid annual leave days**

[18] The Applicants also stated that they were claiming for unpaid annual leave days which had accrued to them as at the date of termination of their employment. The accumulated owed leave days were said to be seven (7) in total, calculated from the 8<sup>th</sup> April 2018 up to the 31<sup>st</sup> October 2018.

**As to Off days**

[19] Applicants further testified that they had not taken their 4 (four) off days for the month of October 2018, for which off-days they were now seeking for monetary compensation.

### **As to Notice Pay**

[20] Both Applicants told the Court that they were informed of the summary termination of their services on October 31, 2018, and that no monies were given to them by the Respondent in lieu of notice.

### **As to the Shortfall for October 2018 salary**

[21] Both Applicants gave evidence that they were expecting to receive their October gross salary in full in the sum of E2, 300.00, but instead they were only paid the sum of E1, 659.00, less a common figure of E537.00. No explanation and / or justification was received from the Respondent for this shortfall, hence their submission that they were entitled to be refunded for this shortfall.

[22] It was on the strength of the aforesaid claims that Applicants accordingly reported their dispute with the Conciliation Mediation and Arbitration Commission (CMAC) which dispute was, after Conciliation, declared unresolved and a certificate of unresolved dispute issued.

### **Closing Submissions**

[23] As part of his written submissions, Applicants' Representative submitted, a



copy of the **Regulation of Wages (Security Services Industry) Order, 2018, (Legal Notice No. 85 of 2018)** issued under Section 11 of the **Wages Act 16 of 1964** as authority for Applicants claims.

### **Analysis of evidence and applicable law**

[24] The evidence presented during the trial clearly demonstrates that at the time of the termination of their employment, Applicants were employees to whom the provisions of **Section 35 of the Employment Act No.5 of 1980** applied.

[25] The Court is therefore satisfied that the Applicants have discharged the onus resting upon them of proving the substance of their respective claims against Respondent. Applicants' evidence also shows that their claims were never paid by the Respondent. In conclusion the Court finds that the Applicants have made out a case for their respective claims and must be compensated accordingly. What remains for determination however, is the question as to how Applicants' claims have been calculated. During the course of the hearing and at its own instance, the Court quizzed Applicants' Representative regarding this issue.

[26] Specifically, it was the attitude of the Court that Applicants' averments

regarding the actual public holidays worked and not paid as well as the periods of overtime should have been averred in the pleadings. In response to the foregoing, Mr Thwala conceded this apparent omission and further applied to file same as a schedule together with his written submissions. The Court acceded to Mr Thwala' s request on the strength of Section 4 of the Industrial Relations Act, 2000, (As Amended), **(IRA)**, which stipulates one of the primary purposes of the Act as being to establish mechanisms and procedures for speedy resolution of conflicts in labour relations. Section 11(1) also becomes relevant for it provides that:

*"The Court shall not be strictly bound by the rules of evidence or procedure which apply in civil proceedings and may disregard any technical irregularities which does not or is not likely to result in a miscarriage of justice".*

[27] It is apparent therefore that both the IRA as well as the Rules of this Court do not **strictu sensu**, require Applicants' affidavits to give an elaborate exposition of all the facts in their full and complex detail-that, ordinarily, being the role of evidence, either oral and/or documentary.

### **Rate per shift**

[28] In the present case and by way of oral evidence, Applicants elaborated their respective claims by stating that their daily rate or rate per shift was E88.86, as per the provisions of Regulation 18 of the Regulation of Wages (Security Services Industry) Order, 2018. This rate of remuneration accrued to Applicants as a legal entitlement by virtue of their classification under Group B of the First Schedule.

### **Unpaid Holidays**

[29] Under this claim, Applicants contended that each one of them had worked seven (7) public holidays for which they had received no remuneration. These public holidays have been more fully set out in Para 16 above. There can be no doubt that Applicants' claims as couched under this head are indeed enforceable which therefore means that each one of them is entitled to judgement in the sum of **E622.02**, calculated as the rate per shift multiplied by the claimed public holidays (7 days x E88.86).

### **Unpaid Leave**

[30] Regulation 7(4) of the Regulation of Wages (Security Services Industry) Order 2018, which relates to annual leave provides as follows, **to wit:-**

*"Where employment of an employee is terminated after a period exceeding three months but not amounting to one year from the date of its commencement, ... the employer shall, on or before the date of such termination, pay to the employee a sum equal to not less than one day's wage for each completed month of such period".*

[31] The aforesaid regulation represents a re-incarnation of Section 123 (1) of the Employment Act No. 5/1980, (as amended), the provisions of which are also peremptory. It is for that reason therefore that Applicants are again entitled to this relief, subject to the variation of the number of days due from seven (7) to six (6) days.

### **Off Days**

[32] The Security Services Regulations, 2018, further provides that "an employee shall be entitled to a minimum of one day off each week". In their evidence before us Applicants testified that no day offs were afforded to them for the entire six (6) months of their employment with the Respondent. Whilst the Court had no reasons to doubt Applicants testimony, we noted however, that there was a contradiction between Applicants' testimony regarding their claim herein and the averments as contained in the Notice of Application.

[33] The contradiction relates to the question of the computation of the off days that are due to the Applicants. It was the understanding of the Court that Applicants were claiming the equivalent of twenty-four (24) days calculated at 4 days for each month multiplied by the six (6) months which they had spent as employees of the Respondent. However, for reasons not known to the Court, Mr Thwala only claimed for the equivalent of one (1) month instead of the six (6).

[34] Unfortunately, this Court may not **mero rnotu** attend to the correction of such a mishap especially where such a correction would occasion some :financial prejudice to a Respondent who is not present before Court to protect its interests.

[35] For the foregoing reasons therefore judgement, in favour of the Applicants in the equivalent of four (4) days wages apiece is in order.

### **Notice Pay**

[36] Part V of the Employment Act, 1980, regulates the termination of all contracts of employment entered into within the Kingdom of Eswatini. For the

purposes of this case, Section 33 (1) (b) thereof provides that the minimum notice of termination of employment that an employer has to give to an employee who has been in continuous employment for a period between three

(3) months and twelve (12) months has to be two (2) days for each completed month of service.

[37] Section 33 (1) (b) provides the substantive basis for Applicants' claim for notice pay. Mr Thwala's computation of the total number of months worked by the Applicants is again off-target. The correct number of months that were served by each of the Applicants with the Respondent was six (6) and not seven (7), which then brings the total number of days to twelve (12) at the rate of E88.86 per day.

#### **Balance of October 2018 Salary**

[38] Applicants' last claim pertains to certain deductions that were made by Respondent upon both Applicants' October wages. Again, Part VI of the Employment Act protects the employee's wages from any unlawful deductions by the employer.

[39) In fact, Section 57 thereof expressly provides that:

**(1) No employer shall make any deductions from the wages due to an employee, or make any agreement or arrangement for any payment to him by the employee for, or in respect of alleged bad or negligent work by the employee.**

[40] Section 61 (2) on the other hand makes it clear that an employee reserves the right to recover all or any part of wages that may have been withheld from him.

[41] An order therefore directing Respondent to re-imburse to the Applicants the portion of their October 2018, wages which was withheld amounting to E537.00 apiece is hereby issued.

### **In Summary**

[42] To sum it all up, Judgement is hereby issued in favour of the Applicants directing Respondent to pay each of the above-captioned

Applicants the sum of E3, 380.52, made up as follows:

43.1 E622.02 for unpaid public holidays;



