

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO.299/04

IN THE MATTER BETWEEN

CHURCHILL DLAMINI APPLICANT

And

SWAZILAND GOVERNMENT RESPONDENT

CORAM:

NKOSINATHI NKONYANE: A.J.

GILBERT NDZINISA: MEMBER

DAN MANGO: MEMBER

FOR APPLICANT: P.R. DUNSEITH

FOR RESPONDENT: N. VILAKATI

JUDGEMENT

JANUARY 2005

The Applicant in this matter is the former Master of the High Court. He brought a notice of motion before the court for an order in the following terms :-

a) directing the Accountant-General to immediately refund to the Applicant the sum of E5,145.83 unlawfully deducted from the Applicant's salary;

b) that the sum of E5,145.83 be paid at the offices of the Applicant's attorney, together with interest at the rate of 9% per annum from 1st August 2003 to date of payment;

c) costs on attorney-client scale;

d) further and/or alternative relief. The evidence before the court showed that on or about 18 July 2000 the Master's office received a cheque of E5,145.83 which was payable to the estate of the late Paulos Gaziliyabila Dlamini.

The executor of the estate was Jerome Dlamini. The executor requested this cheque from the Master and said he urgently needed it to pay estate expenses and creditors, including school fees and expenses for the deceased's three minor children.

In support of this request the executor submitted copies of the schools' invoices amounting to E4,344.30. The copies of which were attached and marked "B2" and "B3".

The Applicant duly handed the cheque over to the executor.

On 25th September 2002 the Applicant received a memorandum written by the Accountant-General directed to the Principal Secretary, Ministry of Justice. The memorandum reads in part as follows:-

"On receipt of this cheque, the Master of the High Court himself presented this cheque to one Jerome Dlamini who was the executor of this Estate. In the distribution account the name of Jerome Dlamini does not appear and as such he was not entitled to the E5,145.83 that the Master gave him. Jerome Dlamini has since died and now the surviving beneficiaries of this Estate want the E5,145.83 that was given to Jerome Dlamini by the Master."

From the reading of the memorandum by the Accountant-General, it seems that he did not seek legal advice on the matter from the office of the Attorney-General. The Accountant-General started to deduct money from the Applicant's salary over a period of five months to cover the amount of E5,145.83.

From the papers before the court it is not stated why was the money deducted from the Applicant's salary. The Respondent's Attorney however, told the court that the Applicant was being surcharged for negligence. She told the court that the Applicant failed to record the cheque in his books before handing it over to the executor, and that such failure amounted to dereliction of duty.

It is not being argued that the failure to record the cheque by the Applicant in his books resulted in the cheque being lost. The cheque was handed to the executor. It is also not being argued that it was wrong for the Applicant to transmit the cheque to the executor of the estate.

The Accountant-General in his memorandum says beneficiaries want the money. There were no supplementary affidavits by the said beneficiaries attached to the Respondent's answering affidavit.

The Applicant did not misappropriate the cheque. It is not in dispute that the Applicant handed it to the executor of the estate.

If the Applicant flouted procedure in the process of transmitting the cheque to the executor, a probe should have been undertaken and recommendation made as to the appropriate disciplinary action to be taken against him.

As it is, it is not known to the court on what legal basis did the Accountant-General surcharge the Applicant especially because the money did not belong to Government, and there was therefore no loss to Government.

Wages of employees are protected under the Employment Act No. 5 of 1980 under Part VI of the Act. Section 57(1) states that,

"No employer shall make any deduction 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."

The operative word in this sub-section is "alleged". In this case there was only an allegation of negligence on the part of the Applicant made by the Accountant-General. The allegation of negligence was never proved. From the papers before the court, no enquiry or probe was made into the alleged misconduct, and the Applicant found guilty. The Applicant was therefore not afforded the opportunity to give his side of the story on the matter.

It is clear from the above observations that the Accountant-General had no right to unilaterally act as he did.

The application must therefore succeed.

The court will accordingly grant an order in terms of prayers (a), (b) and (c) of the notice of motion. The costs in prayer (c) to be on the ordinary scale.

The members agree.

NKOSINATI NKONYANE,

A.J. INDUSTRIAL COURT