

**THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**In the matter between:**

**CASE NO. 301/2000**

**THEMBI HLATSHWAYO                      APPLICANT**

**and**

**CADBURY SWAZILAND (PTY) LTD    RESPONDENT**

**CORAM:**

**NDERI NDUMA: PRESIDENT**

**JOSIAH YENDE : MEMBER**

**NICHOLAS MANANA: MEMBER**

**FOR APPLICANT: S. MAGONGO**

**FOR RESPONDENT: Z. D. JELE**

**J U D G E M E N T - 10/11/05**

The Applicant was employed by the Respondent on the 19 July 1991 until she was dismissed on the 6<sup>th</sup> August 2000.

As a way of assisting staff to build and develop property the Respondent granted building loans to the staff.

The cheque would normally be issued to the supplier or building merchant who would provide the building material directly to the beneficiary of the loan.

On Friday the 25<sup>th</sup> April 1997 whilst one Nomvelo Sihlongonyane was on maternity leave the Applicant under the pretext that she was acting on Nomvelo's request took the Respondent's cheque payable to Skonkwane Hardware in the sum of E3,500.00 and used it for her own benefit.

Subsequent to a disciplinary hearing the Applicant was dismissed from employment after she had been charged with fraud and/or dishonesty relating to company funds. The dismissal was confirmed upon appeal. The dismissal was in terms of Section 36 (b) of the Employment Act No. 5 of 1980 (the Act).

In her own evidence the Applicant told the court that she took the cheque meant for Nomvelo Shlongonyane upon her instruction to do so. She admitted that she used the cheque to purchase material for building her house in terms of an agreement she had with Nomvelo to the effect that she would get half of the material and Nomvelo would get the other half.

Nomvelo in her testimony before court and at the disciplinary hearing denied any such agreement. She also denied ever receiving part of the material purchased by the Applicant as she alleged.

The Respondent was forced to reimburse Nomvelo with another cheque to replace that had been unlawfully appropriated by the Applicant.

The alleged agreement between the Applicant and Nomvelo was not in writing nor was any witness called to corroborate the testimony of the Applicant in this respect.

Nomvelo stated that she had just bought a piece of land at Madonsa and applied for the loan to build a house. It was therefore improbable that she could purchase a piece of land and then give the money to construct the house to another person to use for her own benefit only to be paid back in installments.

Nomvelo said that the Applicant had become aware of the loan application because she had involved the Applicant, a work colleague to assist her with obtaining a quotation from Skonkwane since on that date the Applicant was going to town. Nomvelo herself, at the time was heavily pregnant and as such it was going to be strenuous for her to go to town for purposes of sourcing out the quotation. Unfortunately the Applicant dishonestly took advantage of the situation whilst she was at home.

The Respondent called the second witness Anneter Vilakati who told the court that the Applicant had called her to enquire if Nomvelo's cheque was ready and upon verifying that Nomvelo was on maternity leave she had allowed the Applicant to collect the cheque on her behalf.

The following day, Nomvelo approached her office to collect the cheque and it was then when Anneter realized that something was amiss.

Anneter called the two ladies for a meeting at her office. The Applicant did not allege she had authority to collect or use the money. She pleaded that she be allowed to pay the money in installments. Nomvelo would not hear anything of it and Anneter decided to report the matter to her superiors.

From an analysis of the entire evidence presented before court, it is most improbable that the Applicant had any authority to collect the cheque let alone to use it to purchase her own construction material.

It is also very unlikely that she gave half of the material to Nomvelo. It is clear that the Applicant unlawfully took Respondent's cheque without her authority and used it for her own benefit to the detriment of Nomvelo and the Respondent. The testimony of Nomvelo and that of Anneter was candid, consistent and credible. The Applicant's version of events was highly unlikely and incapable of belief. She by and large lacked credibility.

In simple terms, she was dishonest and had committed a cognizable offence,

In the book, **Workplace Law, John Grogan writes as follows at page 154:**

*"Theft is regarded as one of the most serious forms of disciplinary offences, normally justifying dismissal at first instance, regardless of the value of the property involved, the employees length of service, the absence of previous warnings or whether the employee has subsequently returned the property".*

Furthermore in the case of **Central News Agency (Ptv) Ltd vs Commercial catering and Allied Workers Union and Another (11911 12 IL3 340 LAC, The South Africa Labour Appeal Court stated:**

*"In my view its axiomatic to the relationship between employer and employee that the employer should be entitled to rely upon the employee, not to steal from the employer..... A breach of this duty goes to the root of the contract of employment and of the relationship between employer and employee".*

This was therefore a dismissible offence in terms of Section 36 (b) of the Employment Act. The Respondent has shown that it had dismissed the Applicant for a lawful reason in terms of Section 42 (2) (a) of the Act.

*i*

Furthermore, given the gravity of the offence the court is satisfied that it was fair and reasonable to dismiss the Applicant in the circumstances of the case. Accordingly the Respondent had further discharged the onus placed on it by Section 42 (2) (b) of the Act.

The application is dismissed.

The members agree.

**NDERI NDUMA**

**JUDGE PRESIDENT- INDUSTRIAL COURT**