



IN THE HIGH COURT OF SWAZILAND

Civ. Case No. 54/95

In the matter between:

NONHLANHLA JOYCE MSWELI

Applicant

and

THE BUSINESS MANAGER - SWAZILAND
ELECTRICITY BOARD

1st Respondent

THE SWAZILAND ELECTRICITY BOARD

2nd Respondent

CORAM:

Dunn, A.C.J.

FOR THE APPLICANT

Mr. C. Ntiwane

FOR THE FIRST RESPONDENT

Mr. Flynn ...

Judgment

(23/6/95)

The applicant was employed by the second respondent as an accounts clerk in April 1984. During July 1994 a commission was set up by the second respondent to enquire into an allegation of a misallocation and/or misappropriation of funds within the credit control section of the second defendant. The commission found that the applicant was implicated in the misappropriation of funds. A formal charge of fraud and dishonesty was made against the applicant and she was invited to a hearing on the 14th October 1994. It was not possible to proceed with the hearing on the 14th October and it was postponed to the 19th October.

The applicant sets out in her affidavit that on the 19th October she was called upon to give her side of the story particularly whether she

disputed the findings of the commission of enquiry. No evidence was given in support of the allegations against the applicant. On the 19th October 1994 the applicant received a letter in the following terms -

TERMINATION OF EMPLOYMENT

Following an enquiry report dated the 20th September 1994 and a subsequent hearing on the same case held on the 19th of October 1994, Management has found you guilty as charged. Your services with the Board are therefore being terminated with immediate effect, without notice, in accordance with Section 36(b) of the Employment Act 1980.

The applicant seeks an order that the decision of the 2nd respondent terminating the services of the applicant be reviewed/corrected and/or set aside with costs. The application was filed in terms of Rule 53..

The respondents filed a notice in terms of Rule 30 for an order setting aside the review application as an irregular proceeding. The grounds for the application are that -

"the termination of the services of the applicant was an internal matter and not one determined by the respondents as an administrative tribunal in the exercise of the second respondent's function as the supplier of electricity to the public of Swaziland."

The second respondent is a body corporate established in terms of Section 3 of the Electricity Act No. 10/1963. The general powers of the second respondent are set out under Section 9 of the Electricity Act. Under Section 9(g) the second respondent has the power to -

appoint and employ such persons as it thinks fit, pay them such remuneration and allowances as it thinks fit, grant them such leave as it thinks fit, and dismiss them.

Rule 53 makes provision for the review by the High Court of the decisions or proceedings of -

"any inferior court and of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions."

It was submitted on behalf of the respondent that the respondents as such do not fall within the bodies set out under Rule 53. The 2nd respondent, it was argued, was not required by law or the statute by which it was created to establish with itself the type of body or tribunal referred to under Rule 53. The enquiry which was set up in this case was simply for purposes of the respondent's internal procedures relevant to the question of fair or unfair dismissal. The applicant's remedy it was argued was against the outcome i.e. the dismissal which the applicant considered to be unfair.

There is merit in the submissions on behalf of the respondent. The enquiry or commission set up by the respondent cannot be equated to the bodies, charged with a public duty, referred to under Rule 53. The respondent dismissed the applicant in terms of Section 36(b) of the Employment Act 1980. It is that decision which it is open to the applicant to challenge.

The application under Rule 30 is upheld. The application for review is set aside with costs.



B. DUNN

ACTING CHIEF JUSTICE