]

IN THE INDUSTRIAL COURT OF SWAZILAND

RULING

CASE NO. 214/2007

In the matter between:-

WILLIAM MANANA **APPLICANT**

AND

ROYAL SWAZILAND SUGAR CORPORATION **RESPONDENT**

Neutral citation	**:**	*William Manana v Royal Swaziland Sugar Corporation (214/2007) [2017] SZIC 04 (10 February 2017)*
CORAM	**:**	**DLAMINI J,** *(Sitting with D. Nhlengetfwa & P. Mamba Nominated Members of the Court)*
Last Heard	**:**	**05 November 2016**
Delivered	**:**	**10 February 2017**

Summary: ***Labour law – Absolution from the instance*** *- The test for absolution from the instance is whether there is evidence upon which a Court, applying its mind reasonably to such evidence, could or might [not should or ought to] find for the Applicant. Applicant has to make out a prima facie case.* ***Held:*** *In casu the Applicant has manifestly failed to lead evidence upon which the Court could or might find for him.* ***Held:*** *Absolution application succeeds.*

1. The Applicant in this matter is William Manana, he is a former employee of the Respondent, Royal Swaziland Sugar Corporation. The case of the Applicant is that in 2004 there was a retrenchment exercise undertaken by the Respondent, as a result of which his position was declared redundant. That, according to his evidence in chief, is how he lost his job. In his pleadings though, the Applicant's case is that after his position was declared redundant, he filled in a voluntary package application form and thereafter expected that he would be paid his exit package. However the voluntary exit package was not paid to him. Instead the company reinstituted a disciplinary hearing which had been pending against him, hence the Applicant resigned from his employment due to the employer's conduct.

2. The case of the Respondent on the other hand is that even though the position of the Applicant was declared redundant, this did not translate to a termination of his services. In this regard the Respondent's contention is that the employer/employee relationship still subsisted, at least until such time that the retrenchment process was concluded and the ultimate decision was that he was indeed being retrenched. However, in the case of the Applicant the retrenchment

process was never concluded, instead what happened is that the Applicant resigned from his position after his application for the voluntary exit package was rejected by his line Manager. The Respondent therefore contends that the Applicant is not entitled to his claim for payment of the voluntary exit package, hence its application for absolution from the instance of the Applicant's claim after he had closed his case. This now is the ruling of the Court in respect of the absolution application.

3. A brief summary of the evidence of the Applicant is as follows; in late 2004 he received correspondence from the company advising him that his position had been declared redundant and that he was to be retrenched. He was advised to approach the personnel department to find out more about the intended retrenchment and his exit package. Indeed he approached the personnel department and was informed of the process. His exit package was also calculated and he was informed that it was the amount of E146, 706.85 (One hundred and forty six thousand, seven hundred and six emalangeni eighty five cents). He thereafter completed the voluntary package application form in which he was indicating his desire to voluntarily exit his employment. He

signed this application form on 21 December 2004, and his last day of work was supposed to be 31 January 2005.

4. The Applicant's further testimony was to the effect that he was given time off to scout for alternative employment. This was apparently in line with the decision of the employer that his position was redundant. He was able to secure a new job and accordingly advised his Supervisor of this development. His further evidence is that his Supervisor in turn advised him to resign from his employment. Indeed he resigned with effect from 20 January 2005. After about 2 weeks after tendering his resignation, he received correspondence from the Harvesting Manager advising him that his resignation was not acceptable to the Respondent. He was accordingly requested to avail himself to his Supervisor to discuss the matter further. He however did not accede to the request, since according to him, he had already started his new employment. Following his failure to avail himself, he received another correspondence from his employer, this time advising that his services had been terminated on grounds of desertion. As a result he was not paid the voluntary exit package of

E146,706.85. Instead he only received his pension payout. Hence now this present application.

5. It emerged in his evidence in chief that the primary reason why the employer requested the Applicant to present himself to his Supervisor after his resignation was because there was a disciplinary hearing which was still pending against him, which related to a charge of excessive use of fuel. This hearing had been held in November 2004. As far as the Applicant was concerned there was no hint that the employer wanted to proceed with his hearing, especially after his position had been declared redundant and he was allowed to scout for alternative employment. It also emerged in his evidence in chief that the voluntary exit application had to be approved by 3 Managers. In his case however, only 2 Managers had endorsed his application and the 3rd Manager, a certain Mandla Tshawuka, did not endorse the application, raising the issue of the incomplete disciplinary hearing against the Applicant.

6. Under cross examination by Attorney Mr. Sibandze on behalf of the Respondent, the Applicant conceded that even though his position had

been declared redundant he was still an employee of the Respondent until such time that he was informed otherwise or until his services were formally terminated. He conceded as well that when one applied for the voluntary exit package, it was the employer's prerogative to either accede to or decline such request. The Applicant also conceded under cross examination that 3 Line Managers have to approve or disapprove the application and that after the 3 Line Managers the application has to be considered by the General Manager for his approval or disapproval as well. When asked if, in his case, the employer approved his application for voluntary exit, the Applicant conceded that the employer did not accept or approve his application.

7. When probed on the real reason behind his ultimate decision to resign, the Applicant stated that it was because he had been informed that his position was redundant and that he had subsequently secured a new job elsewhere. But when Attorney Sibandze referred him to his particulars of claim, specifically paragraphs 11 up to 13, where he states that he resigned out of frustration from Mandla Tshawuka who refused to sign his voluntary exit application form because there was a pending disciplinary hearing against him, he confirmed that he was

frustrated by Tshawuka, and as such decided to resign. However, he clarified that the real reason for his resignation was because he had found a new job, pointing out though that the conduct of Tshawuka did have an influence on his ultimate decision to tender the resignation. He stated that he had been assured that his voluntary exit application would be processed. He denied insinuation that he resigned to avoid the pending disciplinary hearing.

8. In determining this absolution from the instance application as filed by the Respondent's Counsel, the Court has to first consider whether his case discloses a cause of action against the employer. The Court has to determine whether there is evidence upon which a reasonable man might find for the Applicant after he has closed his case? ***(See Gascoyne v Paul & Hunter 1917 TPD 170).*** In other words, the questioned to be probed is whether there a *prima facie* case against the employer? The Court in this regard is enjoined to fully apply its mind to all the evidence that is before it at this stage of the trial.

9. Principally the Applicant is seeking for an order that the Respondent be compelled to pay him the amount of E146,706.85 being his

voluntary exit package. In this regard however, the question is whether the evidence at this stage supports his claim. The Applicant correctly conceded that even though his position had been declared redundant he was, for all intents and purposes, still an employee of the Respondent, at least until such time that he was informed otherwise or until such time that his services were formally terminated. In his case however, the Applicant resigned before the date set as his last working day and as a matter of fact he was aware that there was still this pending disciplinary enquiry, which had been heard a mere two months before. Despite this, he still went ahead and terminated the employment relationship himself. In terms of our law, a resignation is a unilateral act by which an employee signifies that the employment contract will end at his election. The act of resignation is in fact the act that terminates the contract. In this matter of the present Applicant therefore, the refusal by the employer to accept his resignation had no effect because he had already terminated his relationship with the employer. (***See: SALSTAFF obo Bezuidenhout v Metrorail [2001] 9 BALR 926***).

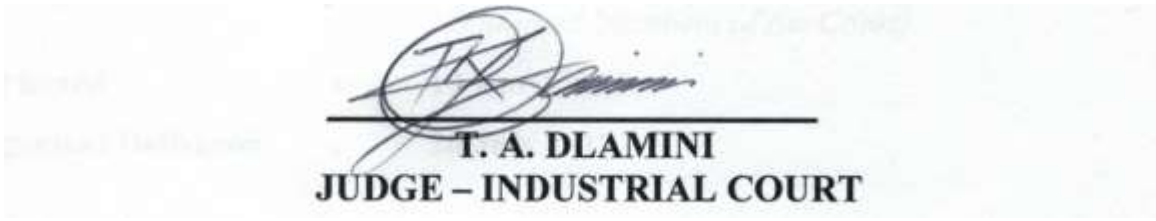
10. Interestingly as well, the evidence indicates that at the time he tendered his resignation he had become aware that his application for voluntary exit had been unsuccessful, hence his contention that he was being frustrated. In fact, the Applicant's evidence was that one of the Line Managers, Mandla Tshawuka, did not approve his application because there was still the pending disciplinary hearing against him. This was before the retrenchment process could be concluded. The application for voluntary exit had to go through and be approved by 3 Managers and the reason for this is simple, each of these managers had to satisfy himself that there were no pending issues with an employee before an application could be approved. And the approval or disapproval was within the employer's prerogative. This in essence means that the voluntary exit scheme is not merely there for the asking. It still has to go through the procedural protocols and process of either approval or disapproval, as the case maybe, by the employer. Can it be said therefore that he has made out a *prima facie* case against his employer for the payment of the voluntary exit package? The test in relation to this present application is whether there is evidence upon which this Court, applying its mind reasonably to same could or might find for the Applicant, William Manana. The test is not

that it should or ought to find for him. It should be pointed out that the consideration of an absolution application is not done on the basis of simply accepting that all the testimony presented by the Applicant is true. The evidence must still be evaluated and compared to all available evidence at that stage.

11. In this present matter, the conclusion by the Court is that the Applicant, William Manana, has failed to provide sufficient evidence to establish a *prima facie* case that he is entitled to the payment of the voluntary exit package he applied for. This I say because at the time he tendered his resignation, his application for the voluntary exit package had not been approved, and he was well aware of the reason why. He cannot be said to be entitled to same as of right. This Court therefore, in applying its mind reasonably to Mr. Manana's own case and evidence, simply cannot conclude that it could or might find in his favour, even in the absence of testimony from the Respondent. Perhaps if the application had been for this Court to review the decision of the employer to disapprove the payment of the voluntary exit package, things could have penned out differently. As it is, this Court cannot compel the Respondent to pay the voluntary exit

package because as a matter of fact the Applicant's application for same was disapproved and such disapproval was before he tendered his resignation. It is the considered view of the Court therefore that the application for absolution from the instance must succeed. Each party is to bear its own costs. That is the ruling of the Court.

The members agree.



T. A. DLAMINI
JUDGE – INDUSTRIAL COURT

DELIVERED IN OPEN COURT ON THIS 10th DAY OF FEBRUARY 2017

For the Applicant: *Attorney Mr. M.E. Simelane (Mbuso E. Simelane & Associates)*
For the Respondent: *Attorney Mr. M. Sibandze (Musa M. Sibandze Attorneys)*