

IN THE HIGH COURT OF SWAZILAND

Civ. T.554/93

In the matter of

THULASIZWE MKHABELA & OTHERS

Applicants

and

UNIVERSITY OF SWAZILAND

Respondent

CORAM: : Hull, C.J.
FOR APPLICANTS : Mr. C. Ntiwane
FOR RESPONDENT :

J U D G M E N T

(28/04/93)

Hull, C.J.

In this ex parte application 8 students at the University of Swaziland join, on a basis of urgency, in applying for relief in the following terms:

"1. Dispensing with the rules of the above Honourable Court in respect of service, form and time limits and that this matter be heard as one of urgency.

"2. That a rule nisi be and is hereby issued calling upon the respondent to show cause on a date to be fixed or on an anticipated return day why an order in the following terms should not be made final.

"(a) That the decision of the University Senate of the 18th March 1993 confirming the recommendations of the Senate Discipline Committee which suspends and excludes

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Applicants from the University and its precincts for the academic year 1992-1993 be reviewed and/or corrected and/or set aside.

"(b) Costs.

"(c) Further and/or alternative relief.

"3. That paragraph 2(a) hereof operates as an interim order with immediate effect pending the return date.

"4. Costs.

5. Further/or alternative relief."

I will make the orders sought in paragraphs 1 and 2(a) of the notice of application and fix the return date for the rule nisi in the first instance as 30th April, 1993 at 9.30 a.m.

I decline to make the order sought in paragraph 3 of the notice of application.

The applicants' supporting affidavits do not set out clearly the bases on which they claim to have prima facie cases for the review of the proceedings against them by the university academic authorities.

In the case of the first applicant, the circumstances in which the disciplinary proceedings were taken against them are not adequately described. I have no basis for forming a provisional, prima facie view as to his own reasons for saying, in paragraphs 12, 13 and 14 of his affidavit, that the

Senate Disciplinary Committee acted unreasonably and maliciously, that it misdirected itself, that it was unfair and partial or that its decision was grossly unreasonable and unexplicable except on an assumption of mala fides or ulterior motive. I have no basis for forming a provisional, prima facie view as to the merits of his claim that the sentence is reviewable.

I am in the same position in respect of the other applicants. They each invoke in their cases the facts averred in the first applicant's affidavit. They each do so in such a way that it is not very clear what they mean in that regard. For example, at paragraph 2 of the second applicant's affidavit, she states "I have read the first applicant's affidavit. I confirm all matters stated therein that pertain and relate to me." When one refers back to the first applicant's affidavit, what he has to say about her is very brief, being found essentially in paragraph 11, 12, 15 and 17 - 21. The position is the same in respect of the other applicants. None of them makes out a sufficient basis on his or her own affidavit, read with that of the first applicant, on which the court can come to a view as to whether he or she has a prima facie case for the substantive relief sought. In the case of the last four applicants, it also appears, though in circumstances that are not clearly and fully explained, that the proceedings against them have not been completed.

Mr. Ntiwane cites Sandile Khoza and Others v The Vice Chancellor of the University of Swaziland and Another (Civil case 1454/92), a decision of my brother Dunn J. I do of course follow the principles of law set out in that decision (and in the other cases therein cited) governing the granting of interim relief. On the facts however, here, I am not satisfied at all that the applicants or any of them has made

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out the first requirement for the interim remedy or that it is otherwise an appropriate case in which (on their papers as they stand) it should be granted.

The costs to date will be in the cause.

A handwritten signature in dark ink, appearing to read 'D. Hull', with a stylized, cursive flourish extending from the end.

David Hull
CHIEF JUSTICE