

IN THE HIGH COURT OF SWAZILAND

a: Snacs

1

Swaziland National Association of Civil Servants Applicant

v

Elliot Mkhathshwa and others Respondent

Case No 2239/97

Coram Sapire ACJ

For Applicant. P. R. Dunseith

For Respondent Z. Magagula

Judgment

15/08/97)

On 15th August 1997 at the suit of the Applicant, I ordered that:

1. " It is declared that those individuals who were elected to the National Executive Committee of the Swaziland National Association of Civil Servants (SNACS) in March 1996 are and remain the National Executive Committee of SNACS and shall so remain until the next Biennial Delegates Conference of SNACS in March 1998.
2. The Respondents are to pay the costs of the Application"

In view of what was said to be the urgency of the matter at the time I did not reserve judgment, or give my reasons for making the order. These are my reasons:

The applicant, commonly known by its acronym SNACS, is an association of civil servants. It is a duly constituted industry union registered with the labour Commissioner in terms of the Industrial Relations Act 1996 and having its registered office in Mbabane. The applicant has a written constitution which governs the affairs of the applicant.

The respondents are a group of its members who claim to have assumed control of the

2

Applicant. This they are alleged to have done at a meeting of the National Executive Committee (NEC) on 28th June 1997. At that meeting, which was merely a consultative meeting with the Regional Executive Committees, of which no formal notice was given the Respondents were able to pass a resolution, of which no notice had been given, dissolving the duly elected NEC and replacing them with the Respondents and one Tsabedze. Tsabedze does not accept the validity of what was done and as he has not made common cause with the Respondents he has not been joined in these proceedings

There is only one issue in this application and that is, has there been a properly constituted meeting in

terms of the constitution at which the Respondents have been elected to the positions they have assumed? To thus there can be only one answer and that is in the negative. The Respondents have not even attempted to show that the provisions of Regulation 9 of the constitution have been complied with. It is only at a meeting convened in terms of that regulation that the offices of the members of the NEC can be declared vacant and a new NEC elected.

The meeting of 28th June clearly was not such . There is no evidence that any subsequent General Meeting was properly summoned on 21 days notice to all members as provided for in the constitution.

There is no constitutional basis for the appointment of an interim committee as the respondents seem to have claimed to have done.

The only conclusion to which I could come was that the NEC which had been elected constitutionally at the last Biennial meeting in terms of regulation 9 had never validly been dissolved or displaced and that the actions of the Respondents amounted to an unconstitutional usurpation of the powers and functions of the duly elected members of the NEC . The order I made was the consequence of the conclusion to which I came.

S W Sapire

Acting Chief Justice