



**SWAZILAND HIGH COURT**

**Shabalala, Richard**  
*Applicant*

v

**Accountant General**  
*1<sup>st</sup> Respondent*

**Attorney General**  
*2<sup>nd</sup> Respondent*

*Civ. Case No. 1373/2000*

Coram

SAPIRE, CJ

For Applicant

Mr. S. Simelane

For Respondent

Mr. P. Flynn

**JUDGMENT**  
(16/10/00)

The applicant seeks an order against both respondents

1. That the Respondent's (sic) be found guilty of contempt of Court and be committed to gaol for such period as the Honourable Court may deem fit.

2. That the Respondents pay the costs of this application at a scale as between attorney and client scale.

The applicant is a former Principal Secretary in the Ministry of Public Service and Information. He says that he is authorised to make the affidavit which is the basis of the relief he seeks. Once again I point out that nobody has to be authorised to make an affidavit. The giving of evidence either viva voce or by way of affidavit is the personal act of the deponent. The assertion of authorisation is meaningless in such circumstances and should be avoided.

After citing and describing the Respondents, the affidavit goes on to recount that on the 18<sup>th</sup> April 2000 the applicant instructed his attorney to bring an urgent application against the 1<sup>st</sup> and 2<sup>nd</sup> respondent for an order that the 1<sup>st</sup> and 2<sup>nd</sup> respondent be required to pay his "salary and benefits" for the month of April, 2000 and the succeeding months. He further sought a direction that the respondent be compelled to pay him his salary so long as he is employed by the Swazi Government. He asked for costs on the scale between attorney and client.

The application and its founding affidavit were duly served. No notice of intention to oppose the application was ever filed.

The representative of the 1st respondent attended court on the 18<sup>th</sup> April, 2000 when a what the Applicant describes as "provisional" order was made. A copy of the order is attached to the papers. It was granted by me and was not provisional in anyway. The order made by consent was that the applicant was to be paid his salary for the month of April and May, 2000.

The matter was postponed sine die.

The order, I am informed, was served on the respondent(s).

The application was then reinstated on the 9<sup>th</sup> June, 2000 and the notice of reinstatement was served on the respondent. The reason given was that the Respondents had not attended to the computation of "terminal benefits" to which the applicant says he was entitled. The notice of reinstatement reads: -

"Please take note that the above matter has been reinstated for hearing in the above honourable court on Friday 9<sup>th</sup> June, 2000 at 9.30 a.m."

On the 9<sup>th</sup> of June 2000 the application was not opposed and an order was granted. The order read as follows: -

*"The 1<sup>st</sup> and 2<sup>nd</sup> respondents are hereby ordered to pay the applicant's salary and benefits for the month of April, 2000 and succeeding months."*

I am not sure why this order was made as the previous order had already dealt with this subject. The applicant has to be paid his salary so long as he is employed by the Government of Swaziland.

The founding affidavit in these proceedings recites that the respondents are in wilful default of the order of court as it is deliberately refusing to comply with the same.

"The respondents are refusing to pay me my benefits that being the car allowance and entertainment allowance. The balance of convenience favours me because the respondent ought not to be allowed to disregard an order of court which can only result in the lowering of the dignity of the above court

I submit that the respondents are guilty of contempt and in all the circumstances I pray that the application be granted. Given the respondents' abuse of the court process and its the contemptuous behaviour I submit that the costs should be on a punitive scale."

That is the content of the founding affidavit.

The answering affidavit which has been filed is that of David Dlamini who also proclaims that in his capacity as Accountant General he is duly authorised to attest this affidavit on behalf of the respondents. Once again I point out that nobody requires to be authorised to make an affidavit.

It is admitted in this affidavit that the applicant is an adult Swazi male and that he is a former Principal Secretary for Broadcasting and Information. In paragraph 5 the respondent points out that the court order did not specify the nature of the benefits that had to be paid to the applicant. The respondents deny that the applicant is entitled to any benefits, comprising the car allowance and entertainment allowance. These they say are the benefits payable to Principal Secretaries only. The applicant's entitlement to these allowances and benefits fell away when His Majesty the King

revoked the applicant's appointment as Principal Secretary by Legal Notice 31 of 1997.

The point of the matter is as follows: -

a) The judgment which stands is unspecific as to what is required. One cannot say what, if any, benefits there are to which the applicant is entitled.

b) Before the applicant proceeded on this application he should have sought a declaratory order as to what was to be paid.

On this ground alone the application to commit the respondents for contempt cannot succeed. There is a further difficulty.

It is statutorily provided that there can be no execution on government assets. In attempting in this way to force these officials to withdraw money from some government account and pay it over to the applicant amount to execution of a judgment. This is a procedure expressly prohibited by statute. Of course one expects the Government represented by its Ministers and officials to obey orders of court.

In the present case if there had been an order that the applicant was to be paid particular amounts as benefits, then I hope Government would have paid. But there seems to be a genuine dispute as to what the applicant is entitled.

That dispute cannot be decided on these papers.

Accordingly the application is dismissed with costs.



**SAPIRE, CJ**