

IN THE HIGH COURT OF SWAZILAND

(HELD AT MBABANE)

CASE NO.: 75/06

In the matter between

STANLEY MATSEBULA

Applicant

and

HOPSON GULE

1st Respondent

THE UNDER SECRETARY MINISTRY OF
EDUCATION

2nd Respondent

THE ATTORNEY GENERAL

3rd Respondent

CORAM: P.Z. EBERSOHN J.

JUDGMENT HANDED DOWN ON 18th SEPTEMBER 2006

JUDGMENT

EBERSOHN J:

[1] The prayers in this urgent application are set out as follows in the notice of motion (all quotations in this judgment are verbatim):

- "1. Dispensing with the usual forms and procedures relating to the institution on proceedings and allowing this matter to be heard as a matter of urgency.
2. Directing the 1st Respondent to deliver forthwith to Applicant all keys, documents and Books belonging to Woodlands Secondary School, Mbabane, Hhohho District.
3. Directing that the Respondents pay the costs of this application.
4. Granting such further and/or alternative relief as to this Honourable Court seems appropriate."

[2] The applicant at the time of instituting this application was the substantive head teacher of the Woodlands Secondary School. He was involved in a motor accident and went on sick leave. There is a dispute whether the 1st respondent was validly appointed as acting head teacher in his stead. It is the applicant's case that the 1st respondent could in any case only act as head teacher until the 7th January 2006 upon which date the applicant would return to his post.

[3] The applicant stated that he went to the offices of the Regional Education Department, Hhohho where attempts were made to contact the 1st respondent on his mobile telephone failed as the 1st respondent disconnected the calls.

[4] The applicant thereupon met the 1st respondent in the street in Mbabane where the 1st respondent accosted the applicant stating that on the instructions of the 2nd respondent he would not hand over the keys of the school to the applicant.

[5] The respondents opposed the application. In the answering papers it was stated that the applicant was suspended due to alleged misconduct which matter, according to them, was still pending. A copy of the letter suspending him was attached to the answering affidavit together with copies of several cheques which the applicant allegedly issued irregularly.

[6] The aspect of the applicant's suspension apparently is the subject of another matter in this Court.

[7] After having considered the matter carefully this Court is of the view that taking into account the disputes of fact the matter should be referred for the hearing of oral evidence and the following order is accordingly made:

" 1. The matter is referred for the hearing of oral evidence on a date to be arranged with the Registrar of this Honourable Court to resolve all the issues and disputes emanating from the papers in this matter.

2. The applicant and the respondents who oppose the application, must serve and file full discovery affidavits at least 8 weeks before the date of the hearing of oral evidence.

3. The applicant and respondents can then ask full particulars for trial purposes at least 6 weeks before the hearing of oral evidence which particulars must be filed and served at least 3 weeks before the hearing of oral evidence.

4. The parties may file and serve supplementary discovery affidavits at least 2 weeks before the hearing of oral evidence.

5. The parties are entitled to subpoena witnesses to testify at the hearing of oral evidence.

6. The parties must hold a full and comprehensive pre-trial conference at least 10 days before the hearing of oral evidence and the minutes thereof must be furnished to the presiding judge at least one week before the hearing of oral evidence.

7. The parties must prepare, serve and file summaries of the evidence of all witnesses they wish to call at the hearing of oral evidence who have not yet made affidavits in the matter which summaries must be served and filed at least two weeks before the hearing of oral evidence and the parties may call no further witnesses unless the Court grants leave in that regard. This paragraph will not apply in the case of a witness having been subpoenaed by a party hereto who refuses to give a statement to the party having subpoenaed him/her.

8. Any party wishing to call a witness to give expert evidence must give notice thereof and file a summary of the opinions of the expert and reasons therefor, at least two weeks before the hearing of oral evidence.

9. Any party wishing to have these terms of reference amended and/or

supplemented may on 7 days' notice to the other parties approach the Court in Chambers for such relief.

10. All costs incurred up to now including the costs of counsel whose fees are herewith certified in terms of rule 68, are reserved.

P.Z. EBERSOHN

JUDGE OF THE HIGH COURT

FOR APPLICANT: ATT. Z. MAGAGULA

FOR RESPONDENTS: ATT.L. DLAMTNI