IN THE HIGH COURT OF SWAZILAND

THE MBABANE CLUB

Applicant

And

ACTING JUDGE NKOSINATHI NKONYANE N.O.

1st Respondent

CHRISTOPHER ZWANE

2nd Respondent

Civil Case No. 2951/2005

Coram: S.B. MAPHALALA-J

For the Applicant: MR. S. SIMELANE

For the Respondent: MS X. HLATSHWAYO

RULING

(16th March 2006)

[1] The Second Respondent has raised from the bar a point in *limine* to the effect that the Applicant's application is bad in law in that it lacks all necessary averments to support an application for review. In this regard it was contended that the averments in the Founding affidavits fall short is satisfying the purpose of review proceedings that the Applicant is aggrieved by the **method** used by the court during the proceedings. In this regard the court was referred to the authority in *Herbstein and Van Winsen, The Civil Practice of the Supreme Court of South Africa, 4th Edition* at page *932* where the following is stated:

> "The reason for bringing proceedings under review or appeal is usually the same, to have the judgment set aside. Where the reason is that the court came to a wrong conclusion on the facts or the law, the appropriate procedure is by way of appeal. Where, however, the real grievance is against the **method** of the trial, it is proper to bring the case on review".

[2] The court was further referred to the legal authorities of *Davenish GE, Administrative Law and Justice in South Africa, Butterworth (2001* at page *427* and the case of *Lonsey Veloso vs A.E. Wolmaras, The Chairman Disciplinary Enquiry Standard Bank of Swaziland Limited - High Court*

Case No. 932/1998.

[3] On the other hand *Mr. Simelane* for the Applicant relied on what is stated by Tebbutt J A in the Court of Appeal judgment of *Takhona Dlamini vs President of the Industrial Court and another Case No. 23/1997* to the effect that permissible grounds of review at common law include unreasonableness, gross unreasonableness, the fact that the decision of the court was reached arbitrarily or capriciously, or *mala fide* or that the court took into account irrelevant consideration or ignored relevant considerations or the fact that the court failed to apply its mind to the entire evidence based before it, or the fact that the decision was so unreasonable as to warrant an inference that the court did not apply its mind to the evidence and error of law.

[4] The court was further referred to the cases of *Standard Bank vs Thembi Dlamini and another, High Court Case No. 3420/2000* and the South African case of *Kabuika and another vs Minister of Home Affairs and others 1997 (4) S.A. 341.* In this respect the court was referred to paragraphs 9.1, 10.2.5, 11 and 12 of the Applicant's Founding affidavit as evidence that the decision of the court was grossly unreasonable so as to give to the inference that it did not apply itself to the evidence before it and that the court ignored relevant considerations and failed to apply its mind to certain relevant considerations but took into account irrelevant considerations.

[5] It appears to me that on the basis of the legal authorities cited for the Applicant and the paragraphs in the Founding affidavit I have been referred to that the Applicant has advanced grounds of review competent at common law. In the result, I find that the point of law in *limine* has no merit and therefore the matter ought to proceed to the merits. Costs reserved to the merits of the case.

S.B. MAPHALALA

JUDGE