

IN THE HIGH COURT OF SWAZILAND

DUMSANI ZWANE

Applicant

And

SWAZILAND INTERSTATE TRANSPORT ASSOCIATION

1st Respondent

SIDUMO D LAM INI N.O.

2nd Respondent

Civil Case No. 1319/2004

Coram: S.B. MAPHALALA-J

For the Applicant: MR. T. MLANGENI

For the Respondent: MR S. MDLADLA

JUDGMENT

16th February 2007

[1] This application before court was brought in terms of Rule 53 of the High Court Rules for an order in the following terms:

1. That the decision of the 1st respondent in terms of which the Applicant's membership in the 1st Respondent was terminated, which decision was communicated by the 2nd Respondent to the Applicant by letter dated 20 March 2003, be and is hereby reviewed and set aside.
2. Those costs of suit be granted against the 1st Respondent.
3. Granting further and/or alternative relief

[2] Rule 53 of the High Court provides that where any law otherwise provides all proceedings to bring under review the decision or proceedings of any inferior court and of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions shall by way of Notice of Motion directed and delivered by the party seeking to review such decision or proceedings to the Magistrate, Presiding

officer or Chairman of the court, tribunal or board or to the officer, as the case may be, and to all other panes affected.

[3] The Applicant in his Founding affidavit outlines the facts partner. to his cause. A number of annexure are also filed in support thereto including annexures "A" being a termination letter dated 20 March 2003, from tie V¹ Respondent to the Applicant. Annexure ~A2" being the constitution of The Swaziland Interstate Transport Association-

[-] The Respondents oppose the grandng of this application and to that end has filed an opposing affidavit of its General Secretary Mr. Sidumo

Dlamini who has answered to the Applicant Founding affidavit in bosh *in limine* and on the merits of the application.

[5] The point raised *in limine* is that due to the affliction of time the Applicant at this stage is now stopped from moving the application "before court. The Applicant has waived his right to bring this application for review. He was well aware of the decision which was made against him notwithstanding the period such decision was communicated to him. Applicant did not approach the court.

[6] In support of the Respondents point *in limine* Counsel far the Respondents filed very comprehensive Heads of Arguments on the subject of the debate. In this regard the court was referred to a number of legal authorities including *Herbstein et al. The Civil Practice of the Supreme Court of South Africa* 4th Edition, page 954, *Chesterfield House (Ptyj Ud vs Administration of Transvaal and others* 1951 (4) S.A. 421, *Meseio and others vs Peskus and others* 1917 T.P.D. 366; *Russoun vs Norton* 1950 (2) S.A.; *Stellensbosch Municipality vs Director of Valuation and othen* 1993 (1) S.A. *Setsokosane Busdlens* 1986 (2) S.A. 57 and *Sedgefield Ratepayers and Voters Association vs Government of the Republic of Souih Africa, and others* 1989 (1) S.A. 688.

[7] In the above-cited legal authorities, it is stated that the cour. has a discretion in the matter. This discretion is a judicial one to be exercssd in the light of all relevant circumstances.

[8] According to the legal authors *Herbstein et al (supra)* there are two principal reasons for the rule that the court should have a power to refuse to entertain a review at the instance of an aggrieved party who has been guilty of unreasonable delay. The first is that unreasonable delay may cause prejudice to other parties. The second is that it is both desirable and important that finality should be reached within a reasonable time in respect of judicial and administrative decisions.

[9] On the other hand the Applicant advanced arguments *per contra* as reflected in his Heads of Argument filed by Mr. Mlangeni for the Applicant. The general proposition advanced therein is that the point *in limine* cannot succeed on the facts of this matter.

[10] I have considered the arguments advanced by Counsel as regards the point of law *in limine* and I have taken the position that Mr. Mdladu is correct in his submissions that *in casu* the unreasonable delay by the Applicant to move this application may cause prejudice to the Respondent. It is trite law that finality should be reached within a reasonable time in respect of judicial and administrative decisions.

[11] In the result, for the afore-going reasons the point of law *in limine* is upheld with costs.

S.B. MAPHALALA

JUDGE