

IN THE HIGH COURT OF SWAZILAND

SABELO MAVUSO

Applicant

And

COMMISSIONER OF POLICE

1st Respondent

THE ATTORNEY GENERAL

2nd Respondent

Civil Case No. 1675/2007

Coram: S.B. MAPHALALA – J

For the Applicant: MR BHEMBE

For the Respondent: MR ZWAXE

JUDGMENT

23rd May 2007

[1] The Applicant a police officer under the Commissioner of Police who is cited as a first Respondent has filed this urgent application against the latter seeking an interdict over the 1st Respondent from holding a disciplinary hearing against him tomorrow the 25 May 2007. He also seeks for costs of the application.

[2] The application is founded on the affidavit of the Applicant which is supported by the affidavit of Mr. Bongani Mdluli who is an Article Clerk with the firm of attorneys Ben J. Simelane and Associates in Manzini. He also attached to his application a Notice of Appeal of the judgment of the Manzini Magistrate Court where Applicant was sentenced

to two (2) years imprisonment on a charge of stock theft.

[3] The Respondents oppose the application and in this regard an Answering affidavit of the Director of Legal Services based at the Police Headquarters, Miss Lydia Dlamini is filed accompanied by annexure "AG1" being an invitation for Applicant to a hearing following his criminal conviction.

[4] In arguments before me Counsel for the Applicant submitted that Applicant's application has satisfied all the requirements of an interim interdict viz (i) a clear right, (ii) a well-grounded apprehension of irreparable harm to the Applicant if the interim relief is not granted and he ultimately succeeds in establishing his right, (iii) that the balance of convenience favours the granting of interim relief and (v) that the Applicant has no other satisfactory remedy.

[5] The gravamen of the Applicant's case is that he has no other alternative remedy but to approach the court because Respondents are hell-bent to proceed with the disciplinary proceedings despite the fact that he has appealed the judgment of the Magistrate Court to the High Court of Swaziland.

[6] On the other hand the Respondents have argued the contrary that Applicant has not proved the requirements of a permanent or final interdicts these being (i) a clear right, (ii) an act of interference and (iii) no other remedy. Arguments were advanced on behalf of the Respondent in support of these requirements.

[7] Having considered the arguments by the parties it appears to me that in *casu* the court is seized with an interim interdict and not a permanent interdict as submitted for the Respondent. On the facts of the present case it appears, to me that Applicant's Counsel is correct that this is an application for an interim interdict and that all the requirements of such have been met by the Applicant. In this respect I am persuaded that Applicant has

no other remedy but to approach this court. The disciplinary tribunal of the Respondent has already made its mind on the fact that it will proceed with the disciplinary proceedings regardless of whether Applicant has appealed the decision of the Magistrate Court.

[8] In the result, for the afore-going reasons an order is granted in terms of prayers (a), (b) and (c) of the Notice of Motion.

S.B. MAPHALALA

JUDGE