IN THE HIGH COURT OF SWAZILAND

MESHACK TIMOTHY SHABANGU

Applicant

And

SWAZILAND INTERSTATE TRANSPORT ASSOCIATION

Respondent

Civil Case No. 1763/2006

Coram	S.B. MAPHALALA -J
For the Applicant	MR M. MKHWANAZI
For the Respondent	MR S. MDLADLA

JUDGMENT

20th July 2007

[1] In this application the Applicant has filed a Notice of Motion in the long form against the Respondent for an order in the following terms:

1. (a) Calling upon the Respondent to show cause why its decision of the 8' February 2006 should not be reviewed and corrected or set aside,

(b) Calling upon the respondent to dispatch within 14 days of receipt of this Notice of Motion to the Registrar the record of the proceedings sought to be corrected or set aside together with such reasons it is by law required or desires to give, and to notify the Applicant that he has done so.

2. Setting aside the suspension of the Applicant's motor vehicle, to wit:

MAKE TOYOTA HIACE

MODEL 2002

ENGINE NO. 4Y 208287

[2] The Applicant has filed a Founding affidavit in support of the above-cited

relief. He has also filed annexures being "A" a copy of the Blue Book; "B" a letter from the Respondents to the Manager of Stannic Bank dated 2nd March 2006, being a recommendation letter. He has also filed a "custom union permit for a passenger vehicle" and a letter from his attorneys to the Chairman of the Respondent concerning the issue of the suspension of positions.

[3] The Respondent has joined issue with the Applicant and has filed an opposing affidavit in this regard. The said affidavit is accompanied by various Minutes of the Executive Committee of the Respondent dated 7th February 2006, 14th February 2006 and 21st February 2006.

[4] The applicant then filed a Replying affidavit to the Respondent's opposing affidavit.

[5] The issue which concerns the court presently is an argument which was brought on a point of law *in limine* by the Respondent to the general proposition that this court has no jurisdiction to hear this matter as *per* paragraph 5 of the Respondent's opposing affidavit. On the other hand the Applicant contends otherwise stating that the High Court has jurisdiction to hear the matter by virtue of the fact that the cause of action arose within its jurisdiction and the parties are domiciled and carry on business within its jurisdiction.

[6] In arguments before me *Mr. Mdladla* for the Respondent cited what is stated by the learned authors *Herbstein and Van Winsen*, *The Civil Practice of the Supreme Court of South Africa* at page *938* where the following is stated:

"The Supreme Court has always asserted its inherent power to appeal or review in preventing justice in the proceedings of non-statutory quasi-judicial bodies. Where a member of a voluntary society has a complaint against an act of an official or committee of a society, he may be contractually bound to bring the complaint

before the proper domestic tribunal appointed. If the domestic tribunal acts according to the rules of the society, the court will not interfere with its decision except on certain clearly defined principles set out below".

[7] The court was further referred to the same text at page 942 thereof where the following is stated:

"Where persons expressly or impliedly consent to the submission of the decision of an arbitral tribunal which discharges quasi judicial functions, they are bound by the decision of the tribunal and a review can lie only if the fundamental principles of justice considered in the light both of the nature of the tribunal or adjudicating body or of the agreement between the persons affected have been violated"

[8] Counsel for the Respondent further referred the court to the South African case in the matter of *Blacor vs University of Cape Town 1993 (4) S.A. 402* to the proposition that Rule 53 does not give this court inherent jurisdiction to review unless of course these matters fall under certain categories and if the association has breached its constitution or its rules. That *in casu* there is no allegation in the papers that the constitution has been flouted. Counsel for the Respondent further contends that the *audi alteram partem* rule cannot apply on the facts of the present case, if there is no bad faith on the part of the individual who is taking the decision, that decision will stand.

[9] *Mr. Mkhwanazi* for the Applicant advanced *au contraire* arguments and filed very comprehensive Heads of Arguments. The main argument is that the submission by the Respondent that the decision is not reviewable before this court simply because it does not fall within the categories stated in the legal authority cited by the Respondent is not correct. Further, that the suggestion by the Respondent that Rule 53 of the High Court Rules is an ouster clause in that it excludes this court's jurisdiction from hearing matters of association in which decisions are taken unilaterally is without merit.

[10] In support of the Applicant's case a number of legal authorities were cited including the Supreme Court case in the matter of *Sibongile Nxumalo and three (3) others vs The Attorney General and two (2) others, Moni Kinamuka vs Samuel Muwanga - Civil case No. 1506/1998* where the learned Judge Masuku stated the following:

"There is a strong presumption against legislation interference with the jurisdiction of the Supreme Court which is equivalent to our High Court *per* the provisions of Section 2 (1) of the High Court Act. It is a well known rule of statutory interpretation that curtailment of power of the court of law will not be presumed in the absence of an express provision or a necessary provision to the contrary therein. The courts will therefore examine closely any provision which appear to curtail its jurisdiction".

[11] The Applicant further referred me to the textbook by *Forsyth and Bennet, Private International Law, Juta's Company, 1st Edition* at page *156* on the issues of residence and domicile.

[12] I have considered the arguments of the parties in this regard and I have come to the considered view that the High Court has jurisdiction to entertain this matter. I say so because the Respondent has not placed before the court the ouster clause which removes the court of its jurisdiction. In this regard I have come to the considered view that the *dictum* in the case of *Moni Kinamuka vs Samuel Muwanga (supra)* is applicable to the facts of this matter. I agree with the learned Judge in that case that there is a strong presumption against legislative interference with the jurisdiction of this court. I further agree with the trite principle of law that curtailment of power of a court of law will not be presumed in the absence of an express provision or a necessary provision to the contrary. All in all, I agree with the arguments advanced by *Mr. Mkhwanazi* for the Applicant.

[13] In the result, the point of law *in limine* is dismissed and that costs to be costs

in the course.

S.B. MAPHALALA

JUDGE