

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIVIL CASE NO. 3444/09

In the matter between:

ABEL SIBANDZE

APPLICANT

VS

STANLIB SWAZILAND (PTY) LIMITED  
LIBERTY LIFE SWAZILAND (PTY) LTD  
TINEYI MAWOCHA  
CALVIN MASEKO  
RUDI MALAN  
NICK HAINES  
LARRY SHEAR N.O.

1<sup>st</sup> RESPONDENT  
2<sup>nd</sup> RESPONDENT  
3<sup>rd</sup> RESPONDENT  
4<sup>st</sup> RESPONDENT  
5<sup>st</sup> RESPONDENT  
6<sup>th</sup> RESPONDENT  
7<sup>th</sup> RESPONDENT

CORAM

MAPHALALA MBC, J

FOR Applicant  
FOR RESPONDENT

MR. Z. SHABANGU  
MR. G. HULLEY

**EX-TEMPORE  
JUDGMENT 04  
DECEMBER 2009**

[1] The issue before this Court is whether or not the Respondents have acted in contempt of the decision of this Court delivered by Honourable Justice Agyemang on the 16<sup>th</sup> November 2009.

[2] Having read the Papers of Record and heard the arguments by Counsel the Court finds that the Respondents acted in Contempt of the Court Order deliberately and *mala fide*.

[3] The Court is satisfied that the Court Order was granted against the Respondents not to hold the hearing in Johannesburg, that the Respondents through their legal representative were informed of the Order and, that the Respondents acted in contempt of the said order to the detriment of the dignity of the Court. This Court has a duty to protect its dignity at all costs.

[4] It is apparent from the opposing affidavit filed by the Respondents that they are now abandoning their decision taken after the disciplinary inquiry; however, it is noted that the Respondents still do not admit that they acted in Contempt of Court in holding the disciplinary inquiry as they did.

Furthermore, Respondents in their opposing affidavit make no undertaking to follow and abide by the Order of this Court issued by Justice Agyemang.

Similarly, a decision on the issue of costs cannot be made without first determining whether or not the Respondents acted in Contempt of the Order.

[5] It is against this background that this Court finds it necessary to decide whether or not to confirm the Rule. The concession made by the Respondents does not in the present case relieve the Court of its duty to decide this application; it cannot for the reasons stated above treat the application as academic.

[6] In view of the concession made by the Respondents in abandoning the Disciplinary Inquiry and the decision taken at the conclusion of the inquiry, it becomes unnecessary for this Court to, decide Prayers 6.1 and 6.2 of this application.

[7] A full judgment will be issued in due course.

[8] I now make the following Order:

- (a) The Rule *Nisi* is hereby confirmed in respect of Prayers 1, 2, 3 and 4.
- (b) The Respondents are directed to pay costs of this application on a scale between attorney and own client.
- (c) The Respondents are directed to comply with Order No. 3 of the Executive part of the judgment delivered by Justice Agyemang on the 16<sup>th</sup> November 2009, namely that an Order is made referring the matter back to the Court *a quo*, differently constituted for the merits of the application described as Industrial Court Case No. 473/09 to be heard as an urgent matter.

- (d) The Registrar of the Court *a quo* is hereby directed to allocate a date or dates within three days of this Order for the hearing of the matter described as Industrial Court case No. 473/09, and that such matter be finalized within fourteen (14) days of this Order.
- (e) Pending finalization of the matter described as Industrial Court case No. 473/09 no disciplinary hearing will be held as between the parties.

M.B.C. MAPHALALA

JUDGE OF THE HIGH COURT OF SWAZILAND