

IN THE INDUSTRIAL COURT OF SWAZILAND

Held at Mbabane

Case No.137/91

In the matter between:-

SWAZICAN STAFF ASSOCIATION AND OTHERS

APPLICANT

and

SWAZILAND FRUIT CANNERS

(PTY)LIMITED

RESPONDENT

RULING

This is an application initiated by the Applicants under a certificate of urgency in which they seek the following orders:-

(b) That a Rule Nisi do hereby issue calling upon the Respondents to show cause why:

(1) The Notice of Redundancy issued by the Respondent against the Second and tenth applicants mentioned in paragraph 2 of the affidavit should not be set aside as being of no force and effect.

(2) An order should not be made declaring the individual contracts of employment of the Applicants mentioned in the paragraph are not terminated or that the notices of redundancy are without effect thereon.

That the Respondent should adhere and not temper with the effect of the above mentioned contracts of employment particularly the right of the applicants to their salaries

That paragraph for here of operate as interm xxx

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is an order for specific performance. They are saying we have tendered our services out employer must pay our salaries the court must order our employer to perform his part of the contract. The court must order our employer to specific performance of our contract and pay our salaries for we have tendered our services. This the court has no power to order specific performance. A servant should not be foisted upon an unwilling employer.

For the reasons stated the Applicants prayer namely an order that the Respondent pay them their salaries because they have tendered their services is unsuccessful. We now come to the question of costs. Mr. Flynn representing the Respondent has submitted that in terms of Section 11 of the Industrial Relations Act this application is frivolous and vexatious because the UBOMBO RANCHES was decided in 1984 and it has been clear since then that reinstatement is not possible. That the Respondent has been put to costs on an application which must have been contemplated as being hopeless. It is vexatious. That the Applicants then proceeded on a certificate of urgency which is self created yet the matter is not urgent.

The question which this court must ask itself is would a reasonable person in the position of the Applicants have initiated this action before court. We have applicants that reasonably believed that an order for the payment of salaries was a proper order for this court to make. Can it be contended in all reasonableness that an ordinary man on the streets of Mbabane could not have issued a similar claim against the employer. Can it in all reasonableness be contended that the Applicants that were desparately

intending to protect the continued flow of their salaries from the Respondent had acted unreasonably, in seeking an urgent resolution of their case. We have not been addressed on these lines nor have we been addressed on the fact that this action was merely initiated to bring annoyance to the Respondent.

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We are not satisfied that the elements of Section 11 of the industrial Relations Act have been discharged for. this court to make the order sought on costs. The application on the question of costs is accordingly dismissed.

M.S. BANDA

INDUSTRIAL COURT PRESIDENT