

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 83/98

In the matter between:

INSTITUTE OF DEVELOPMENT MANAGEMENT                      APPLICANT

And

THE LABOUR COMMISSIONER                                              1ST RESPONDENT

THE ATTORNEY GENERAL                                                      2ND RESPONDENT

CATHERINE UDOIDUNG                                                              3RD RESPONDENT

CORAM:

NDERI NDUMA                                                                                      : PRESIDENT

JOSIAH YENDE                                                                                              : MEMBER

NICHOLAS MANANA                                                                                              : MEMBER

FOR THE APPLICANT                                                                                              : MR. S. C. SIMELANE

FOR THE 3RD RESPONDENT                                                                                              : MR. P. DUNSEITH

RULING

(25. 05. 99)

The Respondent has brought an urgent application seeking for the following orders :

1. Dispensing with the rules of court as regards service, forms and time limits, and that the matter be heard as one of urgency.
2. That a Writ of Mandamus issue, compelling the second respondent to be heard and determine the applicants application for an extension of time, for purposes of reporting a dispute between the applicant and the 3rd Respondent,
3. Staying the proceedings under Case Number 83/98 pending the finalisation of this application.
4. Granting the applicant costs of the application, in the event that it is opposed.
5. Further and/or alternative relief.

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It should be noted that this is an interlocutory application in the middle of an ongoing trial. The trial date was first set on the 23rd June, 1998 for 22nd March 1999 on which date the trial commenced.

Earlier on 31st August, 1998 this court, presided upon by DR. PARKER dismissed the claim in reconvention now sought to be reinstated by the Applicant. Since then the Applicant knew they needed a certificate of unresolved dispute to be able to reinstate the claim. It was not until the 27th September 1998, that the Applicant made an application to the Labour Commissioner for extension of time in terms of Section 57 (3) of the Industrial Relations Act.

On the 28th February 1999 the Labour Commissioner declined to grant such extension of time but the Applicant did not move to review that decision of the Commissioner before an appropriate court.

The trial commenced in earnest on the 22nd March, 1999. It ran for two days and was postponed to the 11th May, 1999 for continuation of the trial.

The Applicant again did not take any action against the decision of the Commissioner until the next trial date on the 11th May 1999 when it caused to be filed the current urgent application. For the court to dispense with the rules of court as regards service form and time limits to hear a matter as one of urgency it must be satisfied by the Applicant that there exists sufficient reasons for the application to be heard as such. Furthermore, for an order staying the proceedings of this trial to be issued, we must be satisfied that the Applicant would suffer prejudice not speculative in nature if the trial proceeded to its conclusion as was held in the Swaziland High Court decision of HUMPHREY HENWOOD v MALOMA COLLIERY (urept).

As it is, there is a decision of the Commissioner of Labour not to entertain the Applicant's report of dispute. This decision has not been reviewed and we cannot be called upon to speculate that a certificate of unresolved dispute would be issued sometimes in the future for the matter to be filed before this court.

To stay the present proceedings under such circumstances would be highly prejudicial to the 3rd Respondent who would have to wait for an indeterminable period for the case to be finalised.

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The Applicant has not given a reasonable explanation as to the delay in challenging the Commissioner's decision and this application in our view is frivolous and intended to unnecessarily delay the 3rd Respondent's case.

The Application is accordingly dismissed with costs.

NDERI NDUMA INDUSTRIAL COURT PRESIDENT