IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 307/2000

In the matter between:

SWAZILAND GOVERNMENT APPLICANT

and

JAN SITHOLE 1ST RESPONDENT

MUSA DLAMINI 2ND RESPONDENT

SWAZILAND FEDERATION OF TRADE UNIONS 3RD RESPONDENT

SWAZILAND NATIONAL ASSOCIATION

OF TEACHERS 4TH RESPONDENT

CORAM:

NDERI NDUMA: PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

FOR THE APPLICANT: MR. MUSA SIBANDZE

FOR THE RESPONDENT: MR. PAUL SHILUBANE

JUDGEMENT

The Applicant has brought an urgent Application seeking the following orders:

1. Dispensing with the procedures forms and service prescribed by the Rules of the Honourable Court and directing that the matter be heard as one of urgency.

2. Dispensing with the usual form and procedures prescribed in Rule 6 (9) of the Rules of the High Court of Swaziland as read with Rule 10 of the Rules of this Honourable Court.

3. Calling upon the Respondents to show cause on a date to be fixed why they should not be held in contempt of court and penalised within the powers of this Honourable court as set out in the Industrial Relations Act No. 1 of 2000.

4. Further and/or alternative relief.

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The Application was founded on an Affidavit of Dr Barnabas Sibusiso Dlamini with its supporting annexures and the cause of action was outlined therein as follows:

7. The purpose of the Application is to have the Respondents held in contempt of court for their breaching of the court order granted under the following circumstances;

7.1 On the 12th November, 2000 the Applicant brought proceedings in this Honourable Court seeking an interdict against the Swaziland Federation of Trade Unions and Swaziland National Association of Teachers and obtained the order attached hereto in Case No. 307/2000 marked 'A'.

7.2 The order called upon the Respondents therein, the SFTU and SNAT, their officers, affiliates, industry trade unions and members and constituents to refrain from participating in the illegal protest and/or strike action intended to take place on the 13th and 14th November, 2000 and from any conduct in contemplation or furtherance of such illegal protest action.

9. The two organisations, SFTU and SNAT, the 3rd and 4th Respondents respectively, did not heed the court order and their officers, the 1st and 2nd Respondents did nothing to assure compliance with the order.

This Application was brought on the 15th November 2000 a day after the two dales covered by the restraining order. It is common cause that the parties had complied with the 2nd order of the court, by attending the Labour Advisory Board meeting that was convened on the 14th November, 2000 in terms of the order of the court. This was not an issue in this application therefore.

The issue that was first raised by the court was whether it had jurisdiction to entertain an application for contempt of court exfacie curie after the alleged non compliance had abated by effluxion of time and therefore the order of the court was incapable of enforcement as of 15th November, 2000.

The Applicant sought to rely on Section 14 (b) of the Industrial Relations Act of 2000 staling that the court had the power to punish the defaulting parties after the horse had boiled as it were.

Section 14 of the Act is headed as follows:

"Enforcement of court orders" and Section 14 (b) reads as below ;

14 An order of the court -

(b) directing the performance or non-performance of any Act shall be enforceable by contempt proceedings in the court in the same manner as an order of the High Court.

The operative words herein are "performance or non-performance" and "enforceable by the contempt proceedings ". A plain reading of the wording of Section 14 (b) is manifestly clear that;

1. It anticipates that there is a directive of the court to perform a certain act, or desist from performing any act.

2. That there has been non compliance with the directive of the court to perform or desist from performing the said Act.

3. That the said non compliance is still persisting and capable of enforcement.

4. That the Applicant requires the assistance of the court by way of enforcement. That is by compelling observance of the order through imposing penalties for any continued disobedience.

Clearly under Section 14 (b), the Applicant has no remedy where the performance or non performance of the court order has been overtaken by events. There is no other provision of the Act which empowers the court to provide the nature of remedy sought by the Applicant.

In the present case, the mass stay away that the Respondents had been interdicted from participating in was specifically called for the 13th and 14th November, 2000. The order of the court was specifically

directed at these two days.

As of the 15th November, 2000 when this Application was brought, there was no protest action taking place from a reading of the papers filed of record and submissions of counsel.

If the Application had been brought on the 13th or the 14th November 2000 when the alleged defiance of the court order was persisting, then the court would have entertained this Application in terms of Section 14 (b) of the Act.

The main purpose of the Industrial Relations Act, 2000 was to repeal certain controversial provisions in the 1996 Act, that prescribed criminal sanctions against parties in breach of its provisions or court orders.

The legislature in its wisdom, upon the advice of all the stakeholders by and large decriminalised the 2000 Act, with a singular objective of promoting harmonious industrial relations.

It is in that light that the legislature did not borrow Section 13 from the 1996 Act, which Section would have enabled the Industrial Court to entertain an application such as the one before us.

This being so, the only remedy the Applicants have is to lodge a complaint with the Police and the Director of Public Prosecutions that the Respondents have committed a criminal offence by defying the order of the Industrial Court issued on the 12th November 2000. The complaint would be investigated and proper charges preferred before a court with appropriate criminal jurisdiction to punish the alleged defaulters.

For the aforesaid reasons, the Application by the Applicant is dismissed with no order
as to costs.

NDERI NDUMA

PRESIDENT - INDUSTRIAL COURT