

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 299/2000

In the matter between:

ELIAS MADIJANE DLADLA

APPLICANT

And

PRINCIPAL SECRETARY/FINANCE

1st RESPONDENT

THE ATTORNEY GENERAL

2nd RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. B. MAGAGULA:

FOR APPLICANT

MR. MSIBI:

FOR RESPONDENT

RULING

20/11/00

The applicant has brought an application for an order -

1. That the rules of the above honourable court in respect of manner of service, form and time limits be dispensed with and the matter be heard as one of urgency.
2. That the applicant's suspension be set aside and the applicant be re-instated in his office.
3. That the applicant be paid his arrear salaries from the period between April 2000 to date.
4. That respondent pays cost of this application.
5. Further or alternative relief.

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There is filed of record a launching affidavit in support of the application. The respondent has filed an answering affidavit in which he controverts factual allegations advanced by applicants.

In his affidavit applicant states that he was arrested and charged for theft of a government computer on 30th March 2000. He is presently out on bail.

In May, 2000 applicant received a memorandum addressed to the Principal Secretary, Finance from the Director of Public Prosecutions. We are not told how the memorandum got into his hands because it was an interdepartmental correspondence. The memorandum has been filed and attached to the applicant's application as Annexure "E D1". The memorandum purported to give the Principal Secretary, Finance authority to suspend applicant.

According to applicant the Principal Secretary, Finance informed him of his suspension from duty verbally. Since his suspension he has not been paid his monthly salary. He avers that this has handicapped him in many ways because his salary is the only source of income he has.

On 5th August 2000 applicant appeared before the Mbabane Magistrate Court for trial. At resumption his attorney raised a preliminary point of law; that applicant/accused was not served with the charge sheet pertaining to the charges he had to answer. Magistrate Hlophe removed the matter from the role pending issuing of the charge sheet by the Directorate of Public Prosecutions.

Applicant therefore, states that as his case was removed from the role he is presently not facing any criminal charges.

Respondent contends that the applicant was suspended in terms of Section 3 (1) of the theft and kindred offences by Public Officers Order 22 of 1975.

This legislation is in line with General Order A. 974 (1) and (2). This General Order provides:

"(1) If a head of department has reasonable grounds for suspicion that an officer employed in his ministry has committed the crime of theft in respect of any public property, he shall, after

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consultation with the director of Public prosecutions, suspend the officer from duty.

(2) If an officer is suspended from duty in the terms of this General Order he shall not be paid any outstanding salary which may be due to him at that date. But if the officer does not appear in a competent court within three months of the date of his suspension he shall be re-instated in his office and be paid any salary due to him both prior to his suspension and during the period of suspension..."

The question that needs to be answered is as follows:

Is the applicant's criminal charge pending before Mbabane Magistrate's court?

According to applicant the matter was struck off the court role by the presiding judicial officer before the accused pleaded to the charge. The reason for striking the matter off the court role was that applicant/accused was not served with a charge sheet informing him of the offence he was facing. The judicial officer decided to remove the matter off the role pending the issue of the charge sheet.

It is therefore clear that the matter is still pending before the magistrate court. The Director of Public Prosecutions will re-instate the matter as soon as he serves applicant with the charge sheet.

Applicant contends that he is not facing any criminal charges. This is not correct. The charge of theft of a government computer has not been finalised. It is still pending.

He also contends that three months has gone-by since his suspension and he has not appeared before a competent court. In his affidavit, applicant has stated that he appeared before magistrate L.L. Hlophe at Mbabane Magistrate court on 5th August 2000 for trial. On the day in question the matter could not proceed for above-mentioned technical reasons. It cannot be said that the applicant has not appeared in court within three months of his suspension. The proper statement would be that he appeared in court and his matter was removed from the role to be re-instated pending issue of a charge sheet.

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The above quoted General Order states that if the officer does not appear in a competent court within three months of the date of his suspension he shall be re-instated in his office. It is therefore, clear that applicant appeared before a competent court and as such the crown has complied with the provisions of

the General Orders.

From the foregoing it is our decision that government complied with both the General Orders above quoted and Section 3 (1) of the theft and kindred offence by Public Officers Order 22 of 1975.

The consequence of our finding is that the application is dismissed with no order as to costs.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)