

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 305/2000

In the matter between:

SWAZILAND NATIONAL ASSOCIATION

OF TEACHERS

1st APPLICANT

SWAZILAND NURSES ASSOCIATION

2nd APPLICANT

And

PRIME MINISTER

1st RESPONDENT

COMMISSIONER OF POLICE

2nd RESPONDENT

SWAZILAND GOVERNMENT

3rd RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. P. R. DUNSEITH:

FOR APPLICANT

MR. M. SIBANDZE:

FOR RESPONDENT

JUDGEMENT

22/11/00

The applicants have brought an application under a certificate of urgency for an order.

a) Declaring the Prime Minister's purported banning of the meetings of the 1st applicant to be an unlawful contravention of Section 103 of the Industrial Relations Act of 2000;

b) Interdicting and restraining the respondents from interfering with and impeding the applicants and their members in the exercise of the rights conferred upon them by the Industrial Relations Act 2000;

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c) Interdicting and restraining the respondents from preventing the applicants and their members from organising and participating in lawful Trade Unions Meetings;

d) Cost on attorney client scale.

Applicants have filed founding affidavits in support of the application. In his affidavit, the Secretary General of Swaziland National Association of Teachers contends that after the eviction of families and the forceful removal of men, women and children from Macetjeni and Ka Mkhweli areas on 13th October 2000, the executive of SNAT received a report from their Big Bend branch.

According to 1st applicant the report revealed that more than seventy students were affected by the evictions and were at the time not attending schools. The affected students included those who were about to sit for their Grade Seven, Form III and Form V examinations.

Teachers of the students were naturally concerned as to the welfare of their pupils and the disruption of their education and wanted a solution to this.

As a result of this report the National Executive of SNAT met on 17th October 2000 to discuss these concerns. The meeting resolved that a petition be prepared and submitted to his Majesty the King to express the concerns of SNAT regarding the brutal evictions and the uncaring disruption of the lives of school children. They also resolved to call a General Meeting on Friday 20th October 2000 - to ascertain the views of the members.

In this meeting the National Executive invited parents and relatives of the affected students to come to explain how the evictions were effected and how their children education was being disrupted.

According to 1st applicant parents and teachers of the affected areas were invited to address the meeting. Among the members of the public who attended were Obed Dlamini, former Prime Minister, and one Mario Masuku, the President of PUDEMO.

1st applicant is not sure in what capacity did the two attend the meeting. However, they were allowed to air their views. In the process they described

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the manner of the evictions and they expressed their personal opinions and criticisms of the Swaziland Government in strong terms.

In this meeting the general membership re-affirmed the decision of the Executive to march to the King. The date was fixed to be 23rd October 2000. On 23rd October 2000 the National Executive and members of SNAT began marching to Lozitha. The march which was peaceful in nature was brutally stopped by the security forces.

After the prevention of teachers to deliver the petition to the King the National Executive met to consider a way forward. They resolved that the branch executives should meet on the 24th October at the SNAT Centre. The meeting resolved that SNAT membership hold a meeting on the 28th October 2000.

On 25th October 2000 the 1st applicant received a letter from the Commissioner of Police complaining that during the meeting of the 20th October 2000 SNAT "allowed and permitted Political activists a platform to actively participate and address the gathering and such political activists unabashedly and with impunity used abusive and seditious language against the authorities of the country." The Commissioner of Police further threatened that they would not hesitate to stop and prevent the holding of meetings of SNAT if they were going to be turned into political rallies or were made to serve as platforms for political rallies.

Respondent No. 1 stated that the meeting was open to all members of the public and as a result it was attended by political activists such as MARIO MASUKU, President of PUDEMO an illegal organisation calling itself a political party. The Prime Minister states that former Prime Minister Obed Dlamini spoke on behalf of NNLC.

1st Respondent states that the 1st applicant did not make any attempt to stop or prevent the meeting from becoming a platform for political activity. 1st Respondent further stated that the rights to associate guaranteed by the Industrial Relations Act do not anticipate an Industry Union holding a meeting at which illegal organisations which are committed to the overthrow of the lawful authorities of the country would be given a forum. In the circumstances, he states that the 1st applicant was not exercising any right conferred upon it by the Industrial Relations Act 1 of 2000.

In the circumstances, he states that in his capacity as the Prime Minister, acting in terms of the Public Order Act 17/1963, accordingly issued the directive banning all meetings of 1st applicant in fear that the meetings of the applicants are likely to cause a breach of the Peace if they continued to be held in this fashion.

Applicant on the other hand is basing his application upon Section 103, Section 4 and Section 8 of the Industrial Relations Act.

Respondent attorney on the onset raised a point of jurisdiction. He stated that this court has no jurisdiction to hear this matter because it raised purely political issues. The 1st applicant contends that he has exercised his rights purely on socio-economic matters.

In this regard respondent referred the court to paragraph 23 of the replying affidavit by respondent. He said that the involvement of political activist such as Mario Masuku and Obed Dlamini and through the actions of 1st applicant who gave them audience in that meeting which was supposed to be a trade union meeting, converted such a meeting to be a political rally.

Applicant in reply states that such a meeting was solely to discuss socio-economic issues affecting the membership of SNAT. He says the issue of the eviction of school children was the issue on the agenda.

Looking at these arguments one would find it very difficult, if no impossible to draw a distinction between socio-economic issues and purely political issues. This is more so in our kind of scenario in Swaziland. One has to appreciate that political activity in this country is very much restricted. Our position is unlike other countries where political parties freely operate. The Kings Proclamation to the Nation of 1973 is still in force and it bans political activity through parties. To say an issue under discussion is politics as opposed to socio-economic in nature is by far a sweeping statement. My opinion here is that each matter depends on its particular circumstances.

Workers in general have an interest to ensure that their children do not suffer hardships when it comes to education. Teachers likewise as parents and professionals as well as workers have an interest that their students who in some instances are their children do not suffer prejudice as a result of policies of government.

If workers who happen to be teachers deliberate on such issues then the line separating such issues as being issues of socio-economies rather than pure-politics is very fine. As I have earlier mentioned one has to look at circumstances of each case.

In the instant case there are two issues for decision. First, did the meeting of the 20th October 2000 concern socio- economic interests of the members of SNAT?

Secondly, did speakers in that meeting address issues on the agenda, or got carried out of the agenda into other issues not pertaining to the subject matter for discussion.

It is common cause that speakers such as Mr. Mario Masuku and Obed Dlamini made scathing statements critical to the Government of Swaziland. Applicants say there was nothing against such statements. As far as they are concerned they were fair comments. I would not like to get to the text of the statements. It is however, clear that on the background of the Kings Proclamation to the Nation of the 12th of April 1973 such statements would be viewed very serious.

It is however, not clear in what capacity these particular speakers were addressing the gathering. Applicants think they were addressing the gathering in their capacity as relatives or spokespersons of the

evicted families. Respondents say they were addressing the gathering as representatives of their organisations.

I believe it was the duty of the presiding officer in that meeting to make sure that speakers were introduced properly. He had a duty to see to it that the meeting was not hijacked by illegal political activity. As it is now we are not sure who the two speakers represented.

Respondent say he verily believe that former Prime Minister, Obed Dlamini, represented the NNLC and that MARIO MASUKU represented PUDEMO. Who can deny that because 1st applicant is not sure, he never wanted to know who the speakers were representing when they stood up and spoke. Under circumstances one cannot blame respondent when he says political activity took place in this particular meeting.

My view in this regard is that a meeting which was convened with good faith to address socio-economic interests of SNAT membership was hijacked

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by political activists and turned into a political gathering. This was due to lack of proper control by the chairperson.

The respondent in their reply brought in the issue of the meeting which took place in Nespruit on 5th November 2000. I propose not to venture into that area. It suffices to point out that these were the events after the banning of the meeting of the 28th October 2000. What this court is here to determine is whether the Prime Minister had any justification or legal authority to, issue the directive which banned applicants' meetings of 28th October 2000 and subsequent meetings.

Mr. Dunseith for applicant stated that what the Prime Minister relied upon on paragraph 21, 22 and 23 of his affidavit is hearsay. He states that the court can only rely on hearsay evidence only if the source of such evidence is reliable. He says this evidence is not reliable because the 1st respondent does not disclose the source of his information. He states that the police officer who made the report has not been called to depose in an affidavit.

It is not in dispute that both Mario Masuku and Obed Dlamini made statements in that meeting. 1st applicant states that the statements described the manner of the evictions and they expressed their personal opinions and criticism of the Swaziland Government in strong terms. He states that though these opinions were not necessarily of SNAT, its executive or its members, they were legitimate and fair comment.

Looking at the applicants affidavit and in particular paragraph 18, it is clear that statements critical of government were made. 1st Applicant even justifies that though they were critical of government in strong terms, they were not the opinion of his organisation or members. He totally dissociates SNAT with those statements. One would wonder as to why he is disassociating SNAT with those statements if they are legitimate.

This court will use its discretion and admit these statements on paragraph 21, 22 and 23 of the replying affidavit by respondent.

The 1st respondent has justified the banning of 1st applicant's meeting in terms of Section 3 (10) (a) (ii) of the Public Order Act 17/1963. He says he feared that the meetings of the applicants were likely to cause a breach of the Peace if they continued to be held in this fashion (see paragraph 27 of the replying affidavits).

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Mr. Dunseith for applicant stated that the Prime Minister has no power conferred to him by this act and in particular the above quoted Sections. He states that it is only an administrative officer or a police officer

who has such power and not the Prime Minister.

He says it is only the Commissioner of Police who can exercise powers conferred by this Section. Mr. Sibandze for respondent directed the court to Sub Section 14 of the said Section which states "In relation to the performance of any duty or the exercise of any power under the preceding Sub-Sections, every administrative officer or Police officer shall comply with such general or specific directions in that behalf, as may at any time, and from time to time, be given by or with the authority of the Minister."

The argument by Mr. Dunseith that the Commissioner of Police did not use his own discretion but used a directive from the Prime Minister cannot hold water, because this Sub-Section clearly points out that any police officer including the Commissioner of Police, shall comply with such general or specific direction.

It is therefore the opinion of the court that all what he did was to comply with the directive of the Prime Minister - as Minister responsible for Police and as minister in terms of the Interpretation Section of this Act.

Coming back to the issue of Jurisdiction, clearly this court has jurisdiction to entertain this matter. This is in terms of Section 8 of Act No. 1/2000. In Government capacity as the employer and in so far as Government is joined as 3rd respondent, this court has jurisdiction to determine issues pertaining to the employment relationship between the two.

Secondly, this court has jurisdiction in so far as Section 103 of the Act is concerned. If the applicants believe that their rights conferred by this Act have been infringed by a person holding a public office or by anyone acting on instruction of such a person then that is interference and is prohibited by Section 103.

The question that this court has to answer is as follows.

Did the Prime Minister have justification in banning 1st applicant's meetings?

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For the above stated reasons this court believes that applicant while holding a legitimate and legal meeting to discuss socio-economic problems of their members, such a meeting was hijacked by political activity and the presiding officer failed to control the proceedings.

The report of the meeting induced fear to the Prime Minister, who in turn felt as head of Government something must be done.

It is the opinion of this court that the Prime Minister's action in banning the meetings is justifiable under circumstances.

However, one must quickly point out that such an act cannot help Industrial Relations in this country. The Prime Minister must learn to open his doors to workers in good faith.

The court has Noble objectives which among many are;

- i. To promote harmonious Industrial Relations;
- ii. To promote fairness and equity in Labour Relations;
- iii. To promote Freedom of Association and Expression in Labour Relations.
- iv. To provide mechanisms and procedures for speedy resolution of conflicts in Labour Relations;
- v. To protect the Rights to Collective bargaining.

vi. To provide a healthy and legally sound environment for the creation of smart partnerships between the Government, Labour and capital.

These objectives cannot be realised if Government as an employer and a facilitator of Industrial harmony would not be receptive to constructive criticism.

However, this court does not lose sight of the fact that in so doing Government must also see to it that this country is safe for everyone living in it. This includes both the workers and capital.

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From the foregoing it is our decision that the Prime Minister had legitimate fears that the meetings would endanger the peace and stability in the country and as such create an environment not conducive for Industrial Relations. The applicants application must therefore, fail in its entirety.

The court makes the following order in terms of Section 8 (4) of the Industrial Relations Act 1/2000. The Sub-Section provides;

"The court may make any order it deems reasonable which will promote the purpose and objects of this act".

- 1) The Prime Minister is ordered to convene a meeting of all Trade Unions affected by the purported ban of their meetings and discuss the problems faced by both parties and then reach a lasting solution of such problems.
- 2) Only Executive Committees of such organisations and relevant Government Departments as well as Representatives of Employers should attend.
- 3) This shall be done on or before Thursday 30th November 2000.
- 4) There shall be no order as to costs. Members have concurred.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)

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