

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO, 201/2004

In the matter between:

UBOMBO SUGAR COMPANY Applicant

And

GRAHAM HADEBE Respondent

CORAM:

NKOSINATHI NKONYANE : ACTING JUDGE DAN MANGO : MEMBER

GILBERT NDZINISA : MEMBER

N. MULELA : FOR APPLICANT

S. NKOSI : FOR RESPONDENT

RULING-14 JULY 2004

This is an urgent application brought by the Applicant against the Respondent.

The Applicant seeks an order in the following terms:

"1. That the above Honourable court dispense with the normal and usual requirements of the rules of court relating to service of process and notices, and the matter be heard as one of urgency, 2, That a rule nisi do hereby issue calling upon the Respondent to show cause why an order in the following terms would not be made final.

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2.1 That Respondent should not be ejected forthwith including all other persons in occupation under his authority from the premises belonging to the Applicant described as House No. 4 Ubombo Drive, Big Bend, District of Lubombo.

2.2 Costs of suit

2.3 Further and/or alternative relief.

3. That the rule nisi above operate as an interim order pending the return date.

A Notice of Intention to Oppose was filed on behalf of the Respondent.

The matter came before the court on the 28th June 2004 and on that day the Respondent's attorney raise two points of law in limine.

The Respondents attorney raised the plea of *Us alibi pendens* and also argued that urgency was lacking. It was argued that a similar application brought by the Applicant against the Respondent was still pending before this court under Case No. 235/03. It was not denied by the Applicant's attorney that a similar matter between the same parties was indeed pending before this court. The Applicant's representative argued that although that was indeed the case, there were some new developments that were brought about by the judgement of this court in Case No. 11/04. She said the new developments led them to decide to institute a fresh application, being the present application before the court.

Since it is not denied by the Applicant that there is still pending an application before this court

between the same parties concerning the same subject matter, the only issue that the court has to consider now is whether the existence of these new developments brought about by the judgement of this court delivered by the President in Case Mo. 11/04, does justify or entitle the Applicant to bring a fresh application.

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In Case No. 11/04 the Respondent who was the Applicant in that case, was seeking an order interdicting the Teaching Service Commission from transferring him from U-Tech High School. The Court dismissed the application and gave him a period of one month within which to relocate to another duty station. The judgement was handed down on the 31st March 2004. These are the new developments referred to by the Applicant's representative which she says entitle them to file a new application.

It is not clear what the court's judgement adds or subtracts to the facts of the application before the court. In terms of paragraph 5.7 of the Founding Affidavit, the Respondent was terminated on the 13th February 2002. It was on the strength of that fact that the Applicant sought his ejection from its premises as he was no longer under its employ. The Applicant instituted proceedings under Case No. 235/03 to have the Respondent ejected from its premises. That is still the same reason why the Applicant has instituted the present proceedings.

The judgement in Case No.11/04 did not have any effect of changing the parties, the cause of action or the subject matter. In other words, the existence of the judgement in Case No.11/04 does not alter the fact that there is already pending between the same parties an application on the same cause of action and in respect of the same subject matter.

The court's ruling in Case No. 235/03 by the President was as follows:

"Accordingly, the application for ejection before the Industrial Court (Case No. 235/03) being the newer application is stayed pending the determination and/or withdrawal of the appeal noted by the Applicant,"

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The appeal has since been withdrawn by the Applicant. The Notice of Withdrawal is annexed on the Founding Affidavit and is marked "JSM8". The Applicant has not withdrawn the application under Case No. 235/03. It now means there are two applications between the same parties on the same cause of action and in respect of the same subject matter.

The court will accordingly order that the second application being the present application be stayed pending the determination of the earlier application or its withdrawal.

The Court will not deal with the question of urgency in the light of the above order.

No order as to costs is made.

The members agree.

NKOSINATHI NKONYANE

ACTING JUDGE - INDUSTRIAL COURT

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