

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 187/02

In the matter between:

LUCKY'S BAR AND RESTAURANT

APPLICANT

And

ALFRED MAJAHONKE KUNENE

RESPONDENT

In re:

ALFRED MAJAHONKE KUNENE

APPLICANT

And

LUCK'S BAR AND RESTAURANT

RESPONDENT

CORAM:

N. NKONYANE: ACTING JUDGE

D. MANGO: MEMBER

G. NDZINISA: MEMBER

M. NDZINISA: FOR APPLICANT/RESPONDENT

S. DLAMINI: FOR RESPONDENT/APPLICANT

R U L I N G - 19.05.05

This matter came before the court on a certificate of urgency. The Applicant/Respondent is seeking an order in the following terms:

"1. Waiving the usual requirement of the rules of court regarding notice service and form of application in view of the urgency.

2. That a rule nisi, returnable on a date to be fixed by the above Honourable court, calling upon the respondent to show cause why a final order should not be granted"-

2.1 *Staying execution of the judgement of the above Honourable court entered against it on the 10 September 2004.*

2.2 *Rescinding and setting aside the order granted by this court on the 10 September 2004.*

2.3 *Granting the applicant leave to oppose the proceedings instituted by the respondent.*

3. *Costs*

4. *Further and or alternative relief."*

A rule nisi was issued by the court on 17.09.04 returnable on 28.09.04. The matter was finally argued on 14.12.2004.

The applicant's main contention was that he was never made aware of the proceedings before court, thus he did not file his intention to oppose the respondent/applicant's application.

The respondent/applicant argued to the contrary that the applicant/respondent was served with the notice of application through a certain Thamsanqa Hlatshwako at the applicant/respondent's place of business on 17.07.2002.

From the applicant/respondent's founding affidavit the evidence reveals that the applicant/respondent was out of the country when the matter was heard in court. He said he learnt through the local newspaper on his return that a judgement has been entered against his business.

A confirmatory affidavit was filed by Thamsanqa Hlatshwako.

In his affidavit he said that two gentlemen came to the business premises and introduced themselves as union members and that they had come to see his father.

He said, as his father was away, he told them to come back when he had returned. The two men left together with an envelope that they had with them that they intended to give to his father.

The respondent/applicant in its papers said the person who served the application on Thamsanqa Hlatshwako was his representative, Selby Dlamini.

From the affidavit of Thamsanqa Hlatshwako, it appears that Selby Dlamini was in the company of someone else.

Neither Selby Dlamini nor the other person that he was with on that day filed confirmatory affidavits.

The respondent/applicant's story as to what actually happened when the two people came to Thamsanqa Hlatshwako is therefore hearsay evidence.

The court will therefore come to the conclusion that the applicant/Respondent has on a balance of probabilities, proved its case against the respondent/applicant.

The application is accordingly granted and order in terms of prayers 2.1, 2.2 and 2.3 is granted.

The applicant is to file its replies within seven days after the date of this ruling. The matter will accordingly appear before the court on 27.05.05. No order for costs is made. The members agree.

N. NKONYANE

ACTING JUDGE - INDUSTRIAL COURT