

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 249/03

In the matter between:

ABANTU MAPHALALA

APPLICANT

And

SIDUMO VALENTINE MDLADLA

1st RESPONDENT

S.V. MDLADLA & ASSOCIATES

2nd RESPONDENT

CORAM:

NKOSINATHINKONYANE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

FOR APPLICANT/RESPONDENTS :

M. SIBANDZE

FOR RESPONDENT /APPLICANT :

IN PERSON

RULING 18/09/07

[1] The applicants are the respondents in the main application and the respondent is the applicant in the main application. For convenience the court will refer to the parties as they appear in the main application.

[2] The respondents have brought this application for an order recalling the applicant for further cross-examination. The applicant has closed his case.

[3] The respondents were represented by a different attorney at the initial stages. Mr. Sibandze has since been instructed by the respondents. He is the deponent to the founding affidavit in support of the present application. He states in his affidavit that after taking full instructions, reading the ruling of the court in the application for absolution from the instance and reading of the record, he is of the view that his predecessor did not examine on various crucial aspects, some of which he could not have foreseen in that they arise out of the ruling of the court.

[4] It became clear to the court during the submissions that the major motivation behind this application is the ruling of the court in the application for absolution from the instance. The respondents now want to have a second chance of cross-examining the applicant based on the ruling of the court. The applicant would clearly be prejudiced. The applicant as he is appearing in person would not have a chance to conduct reexamination.

[5] As usual Mr. Sibandze referred the court to a number of authorities in support of the application. These authorities adequately lay down the relevant principles of the law. The golden rule however is that each case must be decided on its own peculiar circumstances. In the present case the court has no doubt that the applicant would be gravely prejudiced if it were to allow the application.

[6] The application is accordingly dismissed with no order as to costs.

The members agree.

NKOSINATHI NKONYANE
JUDGE - INDUSTRIAL COURT