

IN THE INDUSTRIAL COURT OF SWAZILAND**HELD AT MBABANE****CASE NO. 574/06**

In the matter between:

TOM VILAKATI**Applicant**

and

THE SWAZI NATIONAL TREASURY**Respondent****CORAM:**

P. R. DUNSEITH	:	PRESIDENT
JOSIAH YENDE	:	MEMBER
NICHOLAS MANANA	:	MEMBER
FOR APPLICANT	:	S. C. SIMELANE
FOR RESPONDENT	:	NO APPEARANCE

J U D G E M E N T – 27/06/07

1. On 1st November 2006 the Industrial Court ordered the 1st Respondent the Swazi National Treasury to reinstate the Applicant to his position and employment as general labourer. The court also ordered the 1st Respondent to pay the Applicant's remuneration from the date of his suspension to the date of his reinstatement.
2. This order was served upon the 1st Respondent's Human

Resources Officer, one Bhekumusa Fakudze, on the 8th November 2006 by the Deputy Sheriff.

3. The Applicant subsequently applied to the court on the 7th June 2007 for an order in the following terms:

3.1 That the Respondent be deemed to be in contempt of court by failing or refusing to abide by the order issued by the Honourable Court on the 1st November 2006.

3.2 That the Human Resources Officer being Bhekumusa Fakudze be committed to gaol for such period as may be deemed [fit] by the Honourable Court or until such time that the Respondent complies with the order.

3.3 That the Respondent pay to the Applicant the sum of E89,500.41.

3.4 That the Respondent pay the costs of this application on a scale between attorney and own client.

4. In his supporting affidavit, the Applicant alleges that the 1st Respondent's Human Resources Officer discussed the court order in a meeting with the Applicant's immediate supervisor, the farm manager of Masundwini Farm, and the Applicant was told that he would be later informed of the decision. Despite enquiries made

from the Human Resources Officer, he had received no further communication and he had not been reinstated nor paid his arrear remuneration.

5. The present application was served upon the 1st Respondent's Human Resources Officer, but there was no appearance on behalf of the 1st Respondent or Bhekumusa Fakudze on 7th June 2007 when the matter was called. The court then granted the following order:

- (a) The 1st Respondent is ordered to pay the Applicant the sum of E88.019.54 in respect of arrear salary up to 31st May 2007, subject to any lawful deductions in respect of PAYE income tax and statutory provident fund.
- (b) A rule nisi issues, calling upon Bhekumusa Fakudze to attend at court in person or by counsel on 21st June 2007 at 9.30 a.m. to show cause why he should not be committed to prison for contempt of court.
- (c) The rule nisi in (b) above is to be served personally upon Bhekumusa Fakudze by an attorney or duly authorized Deputy-Sheriff.
- (d) The question of costs is reserved.

6. This order was duly served on Bhekumusa Fakudze personally on 20th June 2007 at the Swazi National Treasury. Nevertheless, on the 21 June 2007 when the matter was called there was still no appearance by or on behalf of Fakudze or the 1st Respondent.
7. Applicant's counsel informs the court that a writ of execution has been issued for the recovery of the Applicant's arrear remuneration, and movable property belonging to the Swazi National Treasury has been attached in execution. However, in order to obtain compliance with the order for reinstatement of the Applicant, counsel has asked that the 1st Respondent's Human Resources Officer, Bhekumusa Fakudze be committed to prison for contempt of court until such time that the Applicant has been reinstated in compliance with the order of the court.
8. The court is satisfied that the order issued on 1st November 2006 was brought to the notice of the 1st Respondent by service on its Human Resources Officer, and that the Respondent has failed to comply with such order by reinstating the Applicant to his employment.
9. The onus of proving absence of willfulness and bad faith in failing to comply with the court order lies on the 1st Respondent. In the absence of any reasonable explanation or excuse, the 1st Respondent must be regarded as intending the natural consequence of its failure to obey the court order viz. to bring the administration of justice into contempt.

Wickee v Wickee 1929 WLD 148

Laubscher v Laubscher 2004 (4) SA 350 (T)

10. We accordingly find that the Swazi National Treasury is in contempt of court by failing to reinstate the Applicant to his employment in accordance with our order dated 1st November 2006.

11. The conduct of the business of the Swazi National Treasury is controlled by the Chief Officer in the Kings Office- see section 13 of The Royal Emoluments and Civil List Act No. 17 of 1992. The Applicant's counsel submits however that the 1st Respondent's Human Resources Officer Bhekumusa Fakudze should be held responsible for the 1st Respondent's contempt of court, for the following reasons:
 - 11.1 Fakudze is responsible for personnel matters at the Swazi National Treasury;

 - 11.2 The court order required the reinstatement of a general labourer at his place of employment at Masundwini Farm. Implementation of the order is the responsibility and duty of Fakudze. All he is required to do is confirm to the farm manager that the Applicant should be permitted to resume his duties. This he has failed to do;

 - 11.3 The court order was served on Fakudze

personally, yet he failed to comply with it after holding a meeting with the farm manager;

11.4 Fakudze was personally called upon to show cause why he should not be committed for contempt, and he could not even bother to excuse or explain his default.

12. We find that Bhekumusa Fakudze is the officer responsible for implementing the court order. He has not given any explanation for his failure to do so. He was served with the court order and the contempt application, and he was afforded a further opportunity to bring to the court's attention any reasons why he is unable to comply with the court's directive. From his inaction and his silence we conclude that he is willfully and contemptuously refusing to comply with the order, and that he is indifferent to the consequences of his refusal.
13. An official associated with the Swazi National Treasury who holds the order of a court in contempt not only undermines the administration of justice but also brings the King's Office into disrepute.
14. The authority of the court must be swiftly vindicated by the enforcement of the order in question. We make the following order;

(a) **The Swazi National Treasury is declared to be in contempt of the order of the Industrial Court**

issued on the 1st November 2006.

- (b) The 1st Respondent's Human Resources Officer Bhekumusa Fakudze is committed to prison for a period of thirty (30) days, which committal is suspended on condition that the Applicant is reinstated to his employment within fourteen (14) days from the date this order is served upon Bhekumusa Fakudze.

- (c) The 1st Respondent is to pay the costs of the application on the scale as between attorney and own client.

The members agree.

PETER R. DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT