

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 267/07**

In the matter between:

SWAZILAND UNION OF FINANCIAL

**INSTITUTIONS & ALLIED WORKERS (SUFIAW)**

**APPLICANT**

And

**SWAZILAND NATIONAL PROVIDENT FUND**

**RESPONDENT**

**CORAM:**

**NKOSINATHI NKONYANE** :

**JUDGE**

**DAN MANGO** :

**MEMBER**

**GILBERT NDZINISA** :

**MEMBER**

**FOR APPLICANT** :

**M. MKHWANAZI**

**FOR RESPONDENT** :

**D.JELE**

**RULING 29.06.07**

[1] This is an urgent application that was brought before the court on a certificate of urgency.

[2] The applicant is seeking an order in the following terms:

1 ."Dispensing with the usual requirements of the rules of court relating to service of documents and notices and that this matter be heard as one of urgency.

2. That a rule nisi do issue, returnable on a date to be fixed by the above Honourable Court, calling upon the respondent to show cause why an order in the following terms should not be made

final:

2.1. Staying the mass retrenchment of applicant's members in respondent's undertaking pending the presentation and adoption of a Forensic Audit Report instituted in terms of Parliament Order Paper No. 09/07 and which was adopted and made a resolution of the House of Assembly on the 29<sup>th</sup> March 2007, inter alia, calling upon the mass retrenchments to be halted whilst the Forensic Audit is undertaken at respondent's undertaking.

2.2 Costs of application.

3. That prayers 2.1 and 2.2 above operate with immediate effect pending finalization of this application.

4. Further and or alternative relief."

[3] The application is founded upon the affidavit of the Secretary General of the applicant, Mr. Vincent Ncongwane.

[4] The application is opposed by the respondent. Because of the time frame, the respondent managed only to file a preliminary answering affidavit to which was annexed a supporting affidavit by Dudu Hlophe.

[5] The respondent however raised preliminary points, hence the present ruling.

[6] One of the points raised in *limine* was that the order sought by the applicant is not competent. The applicant in terms of prayer 2.1 is seeking an order staying the retrenchment of the applicants' because the house of assembly made a resolution on the 29<sup>th</sup> March 2007 against such pending the presentation and adoption of a Forensic Audit Report instituted in terms of Parliament Order Paper No. 09/07.

[7] The respondent is a public enterprise under category A of the Public Enterprises (Control and Monitoring) Act No.8 of 1989.

[8] In terms of the Act, public enterprises are monitored by the Public Enterprises Unit in consultation with the Standing Committee and the governing body. Standing Committee in the Act is defined as the Cabinet Standing Committee on Public Enterprise.

[9] It is clear from the Act that Cabinet through the Standing Committee on Public Enterprises (SCOPE) does have the power to monitor and review the financial affairs and budgets of each category A public enterprise like the respondent.

[10] In the present case however there is nothing that shows that the Minister of Finance has taken any action in this matter.

Attached to the founding affidavit in this application is a SiSwati version of a motion that was moved in the Swaziland House of Assembly. There is nothing that shows that the Speaker and the Clerk did anything after the debate.

There is also no evidence that a motion was passed in Parliament and that the Speaker or the Clerk caused such to be served or communicated to the management of the respondent.

There is also annexed a document marked "B" which purports to be the terms of reference of the Forensic Audit. There is however no evidence that the audit team has been set up.

It is not clear to the court how the debate in Parliament could have a binding effect on the management of the respondent.

In the Founding affidavit of the applicant, there are two issues that seem to be the reason for the application. The applicant says there was no consultation before the notice of redundancy was issued. In paragraph 12 however the

applicant then says there was no proper consultation, It is therefore not clear whether there was no consultation at all or there was no proper consultation.

[16] The applicant's prayer under prayer 2.1 however is not that the retrenchment be stayed because there was either no consultation or no proper consultation. The applicant's prayer is that the pending retrenchment be stayed because of a resolution of the House of Assembly.

[17] The applicant based its prayer on an extract of a debate that went on in Parliament. It has not been shown that such a debate is binding on the management of the respondent.

[18] It cannot therefore be said that the applicant has a clear right to the order sought, as it has not been shown that there was a Parliament resolution that was communicated to the respondent and that therefore the respondent is willfully defying the resolution.

[19] Accordingly the application ought to be dismissed, as prayer 2.1 cannot be sustained.

[20] The application is dismissed.

No order for costs is made.

**NKOSINATHINKONYANE**  
**JUDGE- INDUSTRIAL COURT**