

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 306/2007

In the matter between

**THE SWAZILAND MANUFACTURING
AND ALLIED WORKERS UNION**

Applicant

and

ALEX FAKUDZE

Respondent

CORAM:

P. R. DUNSEITH: PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MAN AN A: MEMBER

FOR APPLICANT: N.FAKUDZE

FOR RESPONDENT: M. SHABANGU

EX TEMPORE JUDGEMENT – 6/7/07

1. The Applicant alleges that on 17th June 2007 the National Executive Committee took a decision to remove the Respondent as a member of the union because he was in arrears with payment of his subscriptions for a period in excess of six (6) months.

2. The Applicant says this decision was communicated in writing to the Respondent on 18 June 2007, but he had nevertheless continued to purport to act as President of the Union by:

- procuring payment of monies to himself;

- calling meetings of the NEC;

- holding on to the Applicant's cheque book and keys; and
- locking the Applicant's Secretary-General out of his office.

3. The Applicant argues that since the Respondent is no longer a member of the union he has ceased to be President of the Union.

4. The Applicant also argues that since the Respondent has lost his employment at YKK South Africa, he cannot continue to hold office in terms of the Applicant's constitution.

5. In the present application the Applicant seeks a rule nisi operating with interim effect in the following terms:

5.1. Interdicting the Respondent from interfering with the operations of the office of Applicant or whatsoever and/or harassing, communicating with the Applicant's Secretary General either directly or indirectly.

5.2. Interdicting the Respondent not to come within (10) ten metres of the Applicant's office and not to communicate with stake holders of Applicant concerning the business of the Applicant.

5.3. Directing the Respondent to return to Applicant its office keys, cheque book and all property belonging to it that are in his possession.

5.4. Directing the Royal Swaziland Police to ensure that this order is carried out and adhered to by the Respondent.

6. The application has been brought as a matter of urgency, and the Respondent has not been given sufficient time to file an opposing affidavit. His counsel appeared to argue that no sufficient case has been made out for the relief sought.

7. The parties agreed to the matter being heard by the President of the Court sitting without the members as permitted by section 6 (7) of the Industrial Relations Act 2000 (as amended).

8. I raised at the outset two preliminary issues, namely whether the court has jurisdiction to hear the matter, and whether there is adequate proof that the Applicant has authorized the bringing of this application by its Secretary-General.

9. Where a dispute arises between two factions in the executive committee of an organization, it is important for the court to determine at the outset whether the application, brought in the name of the organization, indeed has the blessing and authority of the organization, or whether it is merely one faction suing in the name of the organization to obtain greater legitimacy for its claims. The best proof of authority is a resolution of the executive committee passed and signed in accordance with the constitution.

10. In the present case, the Applicant's Secretary-General has deposed to the founding affidavit. From the papers it is clear that there is considerable animosity between the Respondent and the Secretary-General. The Secretary-General stated on oath that he is duly authorized to depose to the Affidavit for and on behalf of the Applicant. This allegation is barely sufficient proof of authority in a case of this nature where there is dissent within the NEC itself.

11. On the question of jurisdiction, the Applicant itself states in its affidavit that the Respondent is not its employee, nor is the Respondent its member.

In matters not involving the infringement of the provisions of a labour law statute, the court may only determine disputes arising between:

- employer and employee, or their respective organizations ;
- organizations;
- an organization and its member

see section 8 (1) of the Industrial Relations Act 2000 (as amended).

12. On the Applicant's own papers, the court has no jurisdiction to hear this application.

13. The matter goes further, however. In my view, on a reading of the Applicant's constitution the Respondent is a member of the Applicant. As I held in **Sipho Mamba**

v SMAWU and Others (IC Case No. 52/2007) a disciplinary hearing for a member of the Applicant's NEC must be conducted by a committee appointed by the union's National Centre, viz the SFL - see article 14.4 of the Constitution. Whilst failure to pay subscriptions for a period of 3 months is indeed a disciplinary offence (article 14.1.1) the NEC had no power to discipline the President of SMAWU by expelling him from membership of the union.

14. The Respondent's removal as a member was ultra vires and unlawful

15. I have also not been able to find any provision in the Applicant's constitution which states that a member and/or officer of the union immediately forfeits his membership and/or office when he ceases to be employed in the industry or trade in which the union is active. Rules 3.10 and 3.11 indicate quite the contrary.

16. The Respondent is still a member of the union and he is still the President of the union.

17. Notwithstanding what is contained in the Applicant's own affidavit, the court does have jurisdiction to hear this matter as a dispute between the union and its member.

18. It is not surprising that the Respondent has reacted in a hostile manner to his unlawful expulsion, although it must be said that locking the Secretary-General out of his office, if this occurred, also amounts to illegal self-help.

19. I am not satisfied that a prima facie case has been shown by the Applicant to warrant the issue of a rule nisi. The parties would be well-advised to either involve an independent mediator to resolve their internal disputes, or to urgently call a Special General Meeting to enable the members of the organization to resolve the conflict within the NEC.

20. The application is dismissed. There is no order as to costs.

**P. R. DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT**