

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 334/07**

In the matter between:

**SIPHO MAMBA**

**APPLICANT**

And

**THE SWAZILAND MANUFACTURING &  
ALLIED WORKERS UNION**

**1<sup>ST</sup> RESPONDENT**

**ALEX FAKUDZE N.O.**

**2<sup>ND</sup> RESPONDENT**

**DELISILE ZONDO N.O.**

**3<sup>RD</sup> RESPONDENT**

**SHEDRACK MASUKU N.O.**

**4<sup>TH</sup> RESPONDENT**

**JABU SHONGWE N.O.**

**5<sup>TH</sup> RESPONDENT**

**ROSE MAGAGULA N.O.**

**6<sup>TH</sup> RESPONDENT**

**SABELO MSIMANGO N.O.**

**7<sup>TH</sup> RESPONDENT**

**SIPHO MANANA N.O.**

**8<sup>TH</sup> RESPONDENT**

**CORAM:**

**NKOSINATHINKONYANE: JUDGE**

**DAN MANGO: MEMBER**

**GILBERT NDZINISA: MEMBER**

**FOR APPLICANT: C.Z. DLAMINI**

**FOR RESPONDENTS: V. DLAMINI**

**JUDGEMENT 23.08.07**

[1] This is an application that was brought to court by the applicant on a certificate of urgency.

[2] The applicant is the Secretary General of the 1 respondent. He is currently on suspension and is challenging the suspension.

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

"1. Dispensing with the forms and time limits as prescribed in the Industrial Relations Act 2000 as amended and the rules of the above Honourable Court and hearing the matter as one of urgency.

2. Pending the finalization of this matter a **rule nisi** do issue calling upon the respondents to show cause, on a date to be determined by the Honourable Court why a final order cannot be made in the following terms;

2.1. Interdicting and restraining the 2<sup>nd</sup> to 8<sup>th</sup> respondents from calling a special delegates congress or any general meeting of 1<sup>st</sup> respondents members.

2.2. That prayer 2.1 only operates with immediate and interim effect.

3. Declaring the suspension and charges preferred by the 2<sup>nd</sup> to 6<sup>th</sup> respondents on the applicant void **ab initio**.

4. Interdicting and restraining the 2<sup>nd</sup> to 8<sup>th</sup> respondents from interfering and or preventing the applicant in any unlawful manner whatsoever, from executing his duties as prescribed by the 1<sup>st</sup> respondent's constitution and trade union customs and conventions.

5. Ordering and/or directing the 1<sup>st</sup> respondent's entire N.E.C. those cited herein and not, to involve the Swaziland Federation of Labour in the appointment of an independent mediator to resolve their internal disputes.

6. That the Matsapha, Sigodweni Police Station Commander and or his lawful agents be present in all meetings of the N.E.C. to keep the peace and/or protect life and property during the joint N.E.C. meetings pending mediation.

7. Granting punitive costs against 2<sup>nd</sup> to 6<sup>th</sup> respondents.

8. Granting any further and/or alternative relief against the respondents as the Honourable Court deems fit."

[4] When the matter was argued before the court on 15 August 2007 there were some new developments. The applicant's attorney told the court that they were abandoning prayers 2. 2.1 and 2.2. The main issue left to be decided by the court therefore is that contained in prayer 3 being a prayer to have the

suspension and charges preferred against the applicant declared void **ab initio**.

[5] The facts of the matter revealed that there is serious animosity between the applicant and the 2<sup>nd</sup> respondent. These personal differences have unfortunately filtered down to the other members of the 1<sup>st</sup> respondent's National Executive Committee (hereinafter referred to as "NEC"). As a direct consequence of this, the NEC is now split into two factions, one is following the applicant and the other is following the 2<sup>nd</sup> respondent. It is thus difficult to execute the duties for which these members were elected into office because whenever a meeting is called, only the members of one faction show up.

[6] The facts present a very unfortunate situation wherein the people who were elected into office to serve the subscribing members of the union, are not doing that, instead they are only busy pushing personal agendas. The parties have been to court several times. In case No. 306/2007 where the 1<sup>st</sup> respondent was the applicant and the 2<sup>nd</sup> respondent was the respondent the President issued an *ex tempore* judgement in which he held at pages 5 - 6 that:

*"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. "*

[7] The court was informed that the mediation part was tried and it failed. The parties have not tried the second part of the recommendation that of urgently calling a Special General Meeting to enable the members of the organization to resolve the conflict within the NEC.

[8] In terms of Rule 8.2.3 of the Union's Constitution, the NEC has power to fine, suspend or dismiss any officer or member for neglect of duty, dishonesty, incompetence, refusal to carry out the decisions of the NEC, or any other reason which it deems good and sufficient in the interests of the Union. The Rule further provides that there shall be a right of appeal to the Annual General Meeting or Special General Meeting.

[9] The parties did not however address this question whether or not this court has jurisdiction to entertain the matter when the constitution provides that an affected party has a right of appeal to the Annual General Meeting or Special General Meeting. The court is therefore precluded from making any finding based on the interpretation of this Rule as the parties did not specifically

address the court on it.

[10] What is clear however is that the NEC is now divided into two factions. When a meeting is convened, it is only those members of one of the factions that attend the meeting. The court does not think that that is what the members of the organization want. The observations of the President in the case of **THE SWAZILAND MANUFACTURING AND ALLIED WORKERS UNION V. ALEX FAKUDZE** (IC) case no.306/2007 at page 3 are relevant to this application where the court pointed out that;

**"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."**

[11] In this case the application was brought by the applicant in his personal capacity. The fact remains however that there are now two factions of the NEC. The applicant has his own supporters. It would clearly be difficult for the NEC to function normally.

[12] One of the charges preferred against the applicant relates to incidents that occurred in 2004. It is not clear why these charges were brought up three years later. The only conclusion that the court can arrive at is that the 2<sup>nd</sup> respondent and the members of his faction want by all means to extend the net so that the applicant cannot escape. This act of the 2<sup>nd</sup> respondent and his followers only shows *mala fides* in the whole exercise.

[13] There was no evidence that in the meeting of the NEC in which the charges against the applicant were preferred that the quorum was formed. No minutes of the meeting were produced to court. The applicant also stated in paragraph 10.5 of the founding affidavit that some of the charges were never deliberated upon and a resolution passed. The burden of proof shifted to the respondents to show that the quorum was formed and the charges were deliberated upon and a resolution passed.

[14] The respondents only responded to paragraphs 10 - 10.2 of the applicant's founding affidavit.

[15] Clearly this ship is sinking and something must be done quickly to save the Union.

[16] The court having taken into account all the evidence before it and all the circumstance of this case will make the following order: -

**1. THAT THE SUSPENSION OF THE APPLICANT IS DECLARED VOID *AB INITIO* AND IS SET ASIDE.**

**2. THAT A SPECIAL GENERAL MEETING BE CONVENED IMMEDIATELY BY THE NEC OR THE MEMBERSHIP IN TERMS OF RULE 7 OF THE UNION'S CONSTITUTION TO DISCUSS AND RESOLVE THE INFIGHTING WITHIN THE NEC.**

**3. THERE IS NO ORDER AS TO COSTS.**

The members agree.

**NKOSINATHI NKONYANE**  
**JUDGE - INDUSTRIAL COURT**