IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 105/05

In the matter between:

SWAZILAND ELECTRICITY BOARD **APPLICANT**

And

COLLIE DLAMINI **RESPONDENT**

IN RE:

COLLIE DLAMINI **APPLICANT**

And

SWAZILAND ELECTRICITY BOARD **RESPONDENT**

CORAM:

NKOSINATHINKONYANE: JUDGE

DAN MANGO: MEMBER

GILBERT NDZINISA: MEMBER

FOR APPLICANT: M. SIBANDZE

FOR RESPONDENT: **A.M. LUKHELE**

RULING 03.04.08

[1] The applicant/respondent brought an urgent application and is seeking an order that the court order in case No. 105/2005 be stayed pending the determination of the review under case No. 1103/08 before the High Court.

[2] The application is opposed by the respondent/applicant and it raised three points of law on which the court must make a ruling.

[3] One of the points of law raised was that of urgency. It was argued that the applicant/respondent has failed to set out any facts why the matter should be heard on the basis of urgency and that any alleged urgency is self-created.

[4] The history of the matter is that this court entered judgement in favour of the present respondent/applicant on 18 May 2007. The applicant/respondent appealed against that decision. Judgement on appeal was delivered on 27 February 2008. The appeal failed because the grounds thereof were found to be questions of fact and not law as envisaged by Section 19 (i) of the Industrial Relations Act of 2000 as amended by the Industrial Relations (amendment) Act No.3 of 2005. The applicant/respondent therefore now wants to try the other route of review at the High court.

[5] The judgement of the Court of Appeal was delivered on 27th February 2008. The applicant/respondent brings this application to court one month and three days later and is claiming that the matter is urgent. There is no explanation in its papers as to what caused the delay in it bringing the application soon after the judgement of the Industrial Court of Appeal. The court finds that this is a classical case of self-created urgency. From the evidence before the court it is clear that the application was brought on an urgent basis on the 31st March 2008 just because the

respondent/applicant is supposed to resume work on 1st April 2008. That is what in fact the applicant/respondent says in paragraph 19 of the founding affidavit that;

> ***"19. In the circumstances the respondent/applicant will be in a position to demand payment of salary as from the end of April 2008 to the prejudice of the applicant on review."***

[6] The prejudice referred to by the applicant/respondent is that if the respondent/applicant resumes work on 1st April 2008 as per the Industrial Court of Appeal order, it will have to pay the respondent/applicant her monthly salary whilst the matter is pending on review. We do not find any merit in this argument. If the respondent/applicant resumes work on 1st April 2007 she will be receiving her monthly salary because she will be working. She will therefore have earned the payment. If the applicant/respondent decides not to give her any work to do, we do not see why that should be a problem for the respondent/applicant.

[7] The other point of law raised is that the Industrial Court has no jurisdiction to stay an order of the Industrial court of Appeal. We do not agree with this argument in this particular matter before the court. The review proceedings instituted by the applicant/respondent at the High court pertains to the reinstatement of the respondent/applicant. That part of the Industrial Court's judgement or order was left intact on appeal. The Industrial Court of Appeal only interfered with the date of the reinstatement because of the intervening appeal proceedings.

[8] The last point of law raised is that this court is *now functus officio* having delivered judgement in case No. 105/2005 (IC). It is correct that this court did entertain a stay of execution proceedings in case No. 105/2005(IC). That application however was for an order staying execution pending determination of an appeal. The appeal was determined by the Industrial Court of Appeal and a judgement was delivered. The matter came to an end. The present application is different in that it is for a stay of execution pending review proceedings. This point of law is therefore also dismissed.

[9] The court having found that urgency has not been established, the application will be dismissed with costs in the ordinary scale.

The members agree.

NKOSINATHI NKONYANE
JUDGE- INDUSTRIAL COURT