

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 251/08**

In the matter between:

<b>STHEMBILE MHLANGA</b>	<b>1<sup>st</sup> APPLICANT</b>
<b>TISHO HADEBE</b>	<b>2<sup>nd</sup> APPLICANT</b>
<b>DUMSILE NXUMALO</b>	<b>3<sup>rd</sup> APPLICANT</b>
<b>AND</b>	
<b>CIVIL SERVICE COMMISSION</b>	<b>1<sup>st</sup> RESPONDENT</b>
<b>PRINCIPAL SECRETARY MINISTRY OF HEALTH &amp; SOCIAL WELFARE</b>	<b>2<sup>nd</sup> RESPONDENT</b>
<b>ATTORNEY GENERAL</b>	<b>3<sup>rd</sup> RESPONDENT</b>

**CORAM:**

<b>NKOSINATHINKONYANE:</b>	<b>JUDGE</b>
<b>DAN MANGO:</b>	<b>MEMBER</b>
<b>FOR APPLICANTS:</b>	<b>N.G. DLAMINI</b>
<b>FOR 1<sup>st</sup> &amp; 3<sup>rd</sup> RESPONDENTS:</b>	<b>V. KUNENE</b>
<b>FOR 2<sup>nd</sup> RESPONDENT:</b>	<b>V. DLAMINI</b>

**RULING ON POINTS RAISED IN LIMINE  
06.06.08**

[1]This is an urgent application brought by the applicants against the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The three applicants are nurses employed by the Swaziland Government and stationed at Mangweni Clinic. They have instituted the present proceedings to resist transfer directives issued to them by the 1<sup>st</sup> respondent.

[2] The respondents filed a Notice of Intention to oppose and also raised two points of law which were argued before the court. The court is therefore presently called upon to make a ruling on the two points of law raised by the respondents.

[3] The first point of law raised relates to urgency. It was argued on behalf of the respondents that the applicants have failed to establish that the matter is urgent and that they will not be afforded substantial redress at a hearing in due course. In the founding affidavit, the only evidence before the court so far, the applicants state that their transfers are in violation of the Government General Orders and also the Recognition and Collective Agreement that is in force between the applicants' Association and the Swaziland Government.

[4] Furthermore, the founding affidavit reveals that the applicants got the letters of transfer on 27<sup>th</sup> May 2008 even though they were dated 19<sup>th</sup> May 2008. This means they had only five days' notice to prepare for the relocation. On reading the founding affidavit as a whole, it seems to the court that there is *prima facie*, grossly unfair labour practice amounting to victimization being perpetrated against the applicants. Such conduct on the part of an employer is a ground for urgency. (See **ZODWA MKHONTA V. SWAZILAND ELECTRICITY BOARD CASE NO. 343/2000 (I.C.)**. This point of law is accordingly dismissed.

[5] The second point of law raised is that the applicants are approaching the court with dirty hands as they have not yet paid the costs ordered in a previous matter between the same parties in case no. 02/2008. The court was referred to the cases of **MEYER V. MEYER 1945 TPD118; WIN & SON V. LEVIN 1916 WLD 36; and MICHAEL V. KENT 1913 TPD 48**. These cases are authority for the proposition that the court will generally order a stay of proceedings until the costs of former proceedings have been paid where, the parties are substantially the same and the causes of action are substantially the same.

[6] The parties in case No.02/2008 (IC) were **SWAZILAND NURSES ASSOCIATION V. THE ATTORNEY GENERAL**. There is clearly no doubt that the parties in case No. 02/2008 are not the same parties as in the present case. If, for example, a writ of execution were to be issued to recover the said costs, it will not be directed against the applicants in the present case. This point of law will also be dismissed.

[7] In light of the above observations, the points of law raised by the respondents will have to be dismissed, and that is the order that the court makes. There is no order for costs.

The member agrees.

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