

# IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO15/09

In the matter between:

MASIZA MA MB A

APPLICANT

And

RALEIGH FITKIN MEMORIAL HOSPITAL

RESPONDENT

**CORAM:**

NKOSINATHI NKONYANE DAN MANGO

JUDGE

GILBERT NDZINISA

MEMBER

MEMBER

FOR APPLICANT FOR  
RESPONDENT

P. MAMBA  
W. MKHATSHWA

## RULING ON POINTS IN LIMINE

05.02.09

[1] This application was instituted by the applicant against the respondent on a certificate of urgency. The applicant is seeking an order in the following terms:

- "1. Dispensing with the normal provisions of the rules of this Honourable Court as it relate to form, service and time limits and dealing with this matter as an urgent one.
- 3.2. Condoning any non compliance with the rules of court relating to time limits, manner of service of Court process and documents and other procedural requirements.
- 3.3. That a *rule nisi* do issue operating with immediate effect calling upon the respondent to show cause on a date to be determined by the above Honourable Court why prayers 3.1, 3.2 3.3 and 3.4 herein below should not be confirmed an order of this Honourable Court.
- 3.4. Declaring the demotion of applicant unlawful therefore a nullity.

- 3.5. That the respondent be and is hereby restrained and interdicted from employing / or appointing or / replacing the applicant his position of painter/glazier.
- 3.6. Directing the respondent to pay applicant in accordance with his position.
- 3.7. Ordering the respondent to pay costs of application at punitive scale.
- 3.8. That prayers 3.1, 3.2 and 3.3 operates with immediate and interim effect pending finalization of the application.
- 3.9. Further and / or alternative relief as the Court may deem appropriate."

The application is opposed by the respondent and an answering affidavit has accordingly been filed on its behalf. The respondent in its papers raised three points in *limine* namely;

- "3.1. I am advised and verily believe that the applicant's application does not comply with the rules of this Honourable Court, with regards to urgency. Nor is any attempt made to allege urgency on the papers.
- 3.10. I am further advised and believe that applicant has not shown, even assuming the remedy sought herein were appropriate, why he could not be afforded redress in the long form.
- 3.11. I am further advised and believe that applicant's application fails to satisfy the requirements of an interlocutory interdict, which appears to be the remedy sought."

[3] The applicant filed a replying affidavit but responded to the points raised in *limine* only and not to the entire answering affidavit of the respondent.

[4] The points raised are related and the court will deal with them simultaneously. On the certificate of urgency no reasons are stated as to why the court should treat the matter as one of urgency. The applicant's representative merely stated that the matter is urgent "by reason of the facts contained in the affidavits." There are so many facts contained in the affidavits. In paragraph 1 of the founding affidavit, for example, the applicant stated that he is an adult male of Ngudzeni area, district of Shiselweni. This cannot render the application urgent.

[2]

[5] The applicant stated in paragraph 15 that on 5 January 2009 the respondent's Acting Chief Personnel Officer and the applicant's immediate supervisor called all employees under the maintenance department and informed them that he has been demoted from the position of painter/glazier. There was no evidence that the applicant was ever appointed to the position of painter/glazier in June 1998 as he alleged in his papers. For this proposition the applicant relies on annexure "R.F.M.1" and he says in terms of this document the accounts department was directed to adjust his salary by two notches and he says that did not happen.

[6] The document marked "R.F.M. 1" is a letter dated 21 November 2008 written by Mr. Leonard S. Dlamini, the respondent's acting Chief Personnel Officer, to the applicant's union SHIAWU. This document has nothing to do with the appointment of the applicant to the position of painter/glazier.

[7] There are about seven unmarked documents annexed to the applicant's notice of motion. The only one of these unmarked documents that refers to the applicant's salary is the one that comes after annexure "MM2" being a memorandum from the acting Chief Personnel Officer to the Transport/Maintenance Supervisor. There the author states that;

" - That Mr. Masiza Mamba shall be awarded 2 notches on his present grade in lieu of his acquired and improving painting skills."

[8] From this document it is clear that the notch increment is awarded on the same grade because the applicant has improved himself by acquiring painting skills. It is clearly not a promotion. The evidence showed that the applicant was engaged by the respondent as a grounds man or general labourer in January 1994. In 2005 he was sent to do a course in painting and glass fitting. It was because of these newly acquired skills that he got the two-notch increment. There is no evidence that he has since been appointed to a new position of painter/glazier.

Mr. Mkhathswa submitted that the applicant is jumping the gun as the respondent is presently in the process of promoting him to the position of painter/glazier in acknowledgement of his newly acquired skills.

The applicant is also seeking an interdict. He must therefore show that he has a *prima*

*facie* right to the order sought. The applicant has failed in his papers to show that he was ever appointed to the position of painter/glazier by the respondent. The court therefore cannot issue any order directing the respondent to pay the applicant in accordance with the position of painter/glazier.

There is no allegation by the applicant that the respondent has declared the post of painter/glazier vacant and intends to immediately fill this position with an outsider and that he is being intentionally sidelined by the respondent in circumstances that amount to unfair labour practice.

Taking into account all the above observations the court will uphold the points raised in *limine*.

The application is accordingly dismissed. No costs order is made. The members agree.