

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 52/09

In the matter between:

SWAZILAND NATIONAL ASSOCIATION OF
CIVIL SERVANTS

APPLICANT

And

THE ACCOUNTANT GENERAL THE ATTORNEY
GENERAL

1st RESPONDENT 2nd
RESPONDENT

CORAM:

NKOSINATHI NKONYANE DAN

JUDGE MEMBER

MANGO GILBERT NDZINISA

MEMBER

FOR APPLICANT FOR
RESPONDENT

M. MKHWANAZI V.
KUNENE

RULING 10.03.09

[1] Four members of the applicant brought an application at the High Court under Case No.4273/08 against the present applicant and three others. The four members wanted to opt out of a funeral benefit scheme that the applicant had set up for its members.

[2] For reasons lost to logic the Accountant-General, the 1 respondent in this application decided to stop deductions from all the members of the applicant, notwithstanding the fact that only four members of the applicant approached the High Court to say they no longer wanted to be part of the funeral benefit scheme and therefore wanted the Accountant-General to stop making the deductions from their salaries.

[3] The applicant therefore was forced to approach this court on an urgent

basis for an order;

"a) Dispensing with the rules of court in relation to forms, manner of service and time limits and hearing this matter as one of urgency.

2. *Directing the 1st respondent to make authorized deductions in terms of Section 43 (4) of the Industrial Relations Act from Applicant members' salaries and remit to the applicant the funds so collected.*

3. *Costs of application.*

4. *Further and or alternative relief."*

[4] A consent order was granted by the court in terms of prayer (b) on 13/02/09. The 1st respondent however failed to comply with that court order. The applicant has now instituted the present application on an urgent basis for an order in the following terms;

"1. Dispensing with the normal rules and procedure in respect of time limits and service and that this matter be heard as one of urgency.

5. *That a rule nisi do hereby issue, calling upon the 1st respondent to show cause why she should not be committed to goal for contempt of court on account of her willful and mala fide refusal and failure to comply with an order of court issued by consent of both parties on the 13th February 2009 returnable on a date to be determined by the above Honourable Court.*

6. *Costs of application on the scale of attorney and own client.*

7. *Further and or alternative relief."*

[5] The 1st respondent is opposed to the application and it duly filed its answering affidavit. The applicant has also filed its replying affidavit.

[6] The 1st respondent denied that it was in contempt of the court order. It stated in paragraph 12.2 of its answering affidavit that the court order could not be implemented in February 2009 as it was served upon it very late when the process of running Government salaries was about to start. In paragraph 12.4 the 1st respondent further stated that it was not possible to comply with the court order during the month of February 2009.

[7] It is very difficult for the court to appreciate the 1st respondent's defence. The 1st respondent did not state in his papers what was it that rendered the implementation of the court order impossible. There is no averment that there was no money due to the applicant's members from Government from which the 1st respondent could effect the deductions.

[8] From the evidence before the court, the applicant has established a prima facie case of contempt of court by the 1st respondent. The court is therefore inclined to grant the order sought in terms of prayer 2 of the application.

[9] Taking into account all the evidence before the court and also all the circumstances of this case the court will make the following order;

- a) **The rule nisi is granted as prayed for in prayer 2 of the applicant's application.**

The return day will be agreed upon between the parties in court.

Costs order is reserved until the finalization of the matter.

The members agree.

NKOSMAJJI NKONYANE JUDGE bh THE INDUSTRIAL COURT