

IN THE INDUSTRIAL COURT OF SWAZILAND

CASE NO. 49/09

HELD AT MBABANE

In the matter between:

APPLICANT

THANDI DLAMINI

And

RESPONDENT

SWAZILAND TELEVISION

CORAM:

JUDGE MEMBER

NKOSINATHI NKONYANE

MEMBER

DAN MANGO GILBERT

NDZINISA

**FOR APPLICANT FOR
RESPONDENT**

**M. SIMELANE M.
J. MANZINI**

RULING 25.03.09

[1] This is an application brought on Notice of Motion by the applicant for an order;

"1. Directing that the recommendation made by the chairman of the disciplinary enquiry be and is hereby set aside.

a) That the respondent be and is hereby directed to finalise the Disciplinary Enquiry within 30 days from date of the Court Order.

b) Granting costs of this application against any party opposing same.

c) Such further and or alternative relief."

[2] The respondent filed a notice of intention to oppose and also a notice to raise points of law. The court is presently called upon to make a ruling on the points of law raised by the respondent.

[3] The points of law raised by the respondent are as follows:-

1. *The application is fatally defective in that the applicant seeks from the above Honourable Court remedies which are inconsistent and mutually destructive.*

d) *In terms of prayer (1) the applicant seeks to set aside the disciplinary hearing, whereas in terms of prayer (2) the applicant demands a ruling in respect of the same proceedings which it seeks to set aside.*

e) *The applicant must make an election as to the remedy which it seeks. In the circumstances the respondent is embarrassed and cannot ascertain the case which it has to meet.*

2. *The application is fatally defective in that it fails to show the grounds upon which the review is based. An applicant bears the onus to establish the grounds upon which it seeks a review.*

[4] It was argued on behalf of the respondent that the pleadings are bad and therefore excipiable because the applicant is seeking two mutually destructive orders under prayers 1 and 2. It was argued that the applicant should have pleaded the second prayer in the alternative. On behalf of the applicant it was denied that the two prayers were mutually destructive.

[5] There is no doubt to the court that the two orders sought by the applicant under prayers 1 and 2 are mutually destructive unless pleaded in the alternative. The court will therefore uphold the point of law raised.

j[6] The second point of law raised is that the application is fatally defective in that it fails to show the grounds upon which the review is based. This point of law is clearly an attack on prayer 1 of the applicant's application. For the court to set aside the recommendation of the chairman, it must be shown that he did not properly exercise his mind on the question whether the hearing should proceed in the absence of the applicant. From the evidence appearing on annexure "TD4" on pages 35-36 it appears there that the chairman did in fact make enquiries as to why the applicant was not present. He satisfied himself that all means have been taken to notify her of the proceedings. The court will therefore also uphold this point, of law. The respondent prayed that the application be dismissed with costs. The court will however use its discretion and grant the applicant leave to file amended papers.

[7] Taking into account all the submissions of the parties the court will make the following order;

f) **The points of law raised are upheld. The applicant is granted the leave to file amended papers within ten days of this ruling and thereafter the matter to follow its normal course.**

g) **The applicant is to pay the costs.**

The members agree.

A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a series of loops and a long horizontal stroke extending to the right.

NKOSIMATHI

**NKONYANE JUDGE OF THE
INDUSTRIAL COURT**