

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**CASE NO. 82/2009**

**HELD AT MBABANE**

In the matter between: **XOLILE**

**APPLICANT**

**NKAMBULE and**

**SWAZILAND GOVERNMENT**

**1<sup>st</sup> RESPONDENT 2<sup>nd</sup>**

**THE ATTORNEY GENERAL**

**RESPONDENT**

**CORAM:**

**MR. M. MTHETHWA**

**S. NSIBANDE M.**

**ACTING JUDGE**

**MTETWA A.M.**

**MEMBER**

**NKAMBULE**

**MEMBER**

**MR. M. MKWANAZI**

**FOR APPLICANT**

**FOR RESPONDENT**

**RULING ON POINT OF LAW**

**26<sup>th</sup> MARCH 2009**

1. The Application was instituted by the Applicant against the Respondents on a certificate of urgency. The Applicant is seeking an order in the following terms:-

*"1. Dispensing with the rules of Court relating to forms, manner of service and time limits hearing this matter as one of urgency.*

*13. Reviewing and setting aside the Respondent's unilateral decision to transfer the Applicant from Manzini Magistrates Court to Nhlanguano Magistrates Court.*

*14. Declaring the purported transfer of the Applicant aforesaid unconstitutional, ultra vires and null and void ab initio.*

15. *Costs of the application on the attorney own client scale.*

16. *Further and/or alternative relief."*
2. The application is opposed by the 1<sup>st</sup> Respondent and an answering affidavit has accordingly been filed on its behalf. In its answer, the 1<sup>st</sup> Respondent takes issue with the urgency alleged by Applicant and states that;  
*"There is no urgency because Applicant was transferred in November 28<sup>th</sup> 2008 effective 1<sup>st</sup> January 2009. When the transfer date came she complied and proceeded to her new work station in Nhlngano... She only raised her complaints in February yet she had the whole of December to file her application if it was urgent."*
3. The Applicant's grounds of urgency are set out in paragraphs 22 and 23 of the founding affidavit which read thus:  
*"22. I state that the matter is urgent in that the effective date of the transfer has passed and I will not be afforded substantial redress at a hearing in due course.*  
*23. The conduct of the Registrar therefore amounts to a fundamental breach of my right to be transferred and disciplined by the Civil Service Commission and this fact alone renders the matter urgent."*
17. It is common cause that the Applicant was called into office of the Registrar of the High Court on 28<sup>th</sup> November 2008 and advised that she was being "redeployed" from the Manzini Magistrates Court.
18. It is common cause also that the Applicant complied with the redeployment and that from 1<sup>st</sup> January 2009 she reported for duty at the Nhlngano Magistrates Court.
19. On the 4<sup>th</sup> February 2009, she requested, by letter to the Registrar a return from Nhlngano Magistrates Court to Manzini Magistrates Court and enumerated a number of issues that made it unsuitable for her to remain in Nhlngano. Her attorneys also addressed a letter to the 2<sup>nd</sup> Respondent advising that the transfer was *ultra vires* and that unless same was withdrawn within seven days, legal proceedings would be instituted.
20. There is nothing in Applicant's papers that explains her inaction from 28<sup>th</sup> November 2008, when she first heard of her transfer. There is no suggestion that she engaged the Registrar of the High Court in any talks/negotiations or that she approached a third party to negotiate or intervene on her behalf.
21. The first time that the Applicant springs to action is on 4<sup>th</sup> February 2009 at

least two months after she became aware of the redeployment and one month after actually transferring to Nhlango.

22. Courts have repeatedly said that a party who takes a lackadaisical attitude towards an infringement of its rights and neglects to act promptly in seeking relief cannot at a later stage suddenly engage a high gear and try to accelerate the litigation process by claiming urgency.

(See **Dumsani Dlamini and 16 Others vs Siyaspa (Pty) LTD Trading (Nhlango Spar) Case N° 23/09.**)

23. Since the Applicant has taken no action to challenge her transfer since November/December 2008, she clearly cannot seek to have all parties engage in a high gear of litigation simply because of her unhappiness with her new work station in Nhlango. This is a self created urgency.

24. In our view the Applicant can be afforded full redress in due course if the application is heard in terms of normal time limits. It is our view that the applicant must comply with the dispute reporting procedures prescribed by Part VIII of the Industrial Relations Act. If the dispute remains unresolved after conciliation it may be referred to the Industrial Court for determination. While matters normally come before the Court by way of action proceedings, Rule 14 of the **Industrial Court Rules 2007** provides for matters to be brought by notice of motion where a material dispute of fact is not reasonably foreseen. This is a consideration the Applicant will have to make once the dispute resolution procedure has been finalized.

25. The Applicant's attorney referred the Court to **Industrial Court Case N2 509/2008 - Cinisela Welcome Dlamini and Norman Majuba Sigwane N.O. and 4 Others** for the proposition that a breach of a fundamental constitutional right is a ground for hearing a matter on an urgent basis.

26. While we agree with that decision, this case stands on a different footing. What has happened in this case is that the Applicant alleges that the Registrar of the High Court has usurped the powers of the Civil Service Commission by transferring her. This is the usual type of matter which the Courts see frequently where a public officer is alleged to have acted *ultra vires* the powers he/she has. There is no breach of the Applicant's fundamental right.

27. For these reasons we uphold the Respondents point *in limine*. The application is dismissed with no order as to costs.

The members agree.