

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 177/2009

In the matter between:

SIMON TSIKATI

APPLICANT

and

SWAZILAND TRANSPORT ALLIED WORKERS UNION 1st RESPONDENT

ZAKHELE MSIBI

2nd RESPONDENT

CORAM:

S. NSIBANDE JOSIAH YENDE

PRESIDENT

NICHOLAS MANANA

MEMBER

MEMBER

MS. MKOKO

FOR APPLICANT FOR

MR. MNGOMEZULU

RESPONDENT

RULING ON POINTS IN LIMINE - 20/05/09

1. The Applicant applied to this court on an urgent basis for an order

"1. Dispensing with the usual requirements relating to time limits, manner of service, form and procedure in applications and enrolling this matter as one of urgency.

7. *Condoning any non compliance with the rules of court.*

8. *That a rule nisi do hereby issue operating with interim and immediate effect returnable on a date to be fixed by the Honourable Court calling upon the Respondents to show cause why prayers 3.1 and 3.2 herein below should not be made a final order of court.*

9. *Declaring the decision of the Respondents of the 30th March 2009 of suspending the Applicant from employment unlawful, null and void on the ground that the suspension decision was taken by a body not constitutionally in office.*

10. *Set aside, the suspension decision of the 30th March 2009,*

11. *Costs of this application.*

12. *Further and/or alternative relief."*

2. The Respondents was served with the application on 15th April 2009 at

15.30 hrs and in terms of the notice of motion were to file their intention to oppose, if any by no later than 4. 30 p.m. on 16th April 2009 and were further required to appear in court at 9.30 a.m. on 17th April 2009. 1st Respondent appeared in court and filed a notice to raise points of law.

3. In terms of the notice, Respondent raised three points articulated as follows:

3.1 *"Urgency - Applicant has dismally failed to set forth explicitly the reasons he avers he cannot be afforded substantial relief at a hearing in due course as required by Rule 15 (2) of the Rules of the above Honourable court read with Rule 6 (25) (b) of the Rules of the High Court.*

3.2 *Sufficient Notice - The Applicant served a purported urgent application on the Respondents in the late afternoon of the 16th April 2009. The Respondent has been afforded less than twenty-four hours to deal with the instant application and instruct attorneys thereon. The cause of action complained of arose on 30th March 2009 and Applicant became aware of same then.*

In the premises the notice afforded by the Applicant to the Respondent is so short as to amount to no notice at all, hence the Applicant failed to comply with Rules 15 (4) of the Rules of the above Honourable Court.

3.3 Interim Relief: *The Applicant has dismally failed to demonstrate to the Court that he is seized with all the requirements of an interim interdict. At paragraph 11.4 of his Founding Affidavit the Applicant unwittingly concedes that he has an alternative remedy rather than hastily approaching the above court."*

4. This court has, on numerous occasions stated that it will not take cognizance of any dispute which has not been through the conciliation process prescribed by Part V111 of the **Industrial Relations Act 2000** (as amended) and certified as an unresolved dispute. Apart from satisfying the court that the matter is sufficiently urgent to justify the usual time limits prescribed by the rules of court being curtailed, the Applicant must also establish good cause for dispensing entirely with the conciliation process. (See **Vusi Gamedze v Mananga College I.C. Case No. 267/2006**).

5. Rules 15 (2) of the Industrial Court Rules 2007 enjoins the present Applicant *"to set forth explicitly in his affidavit supporting the application:*

13. *the circumstances and reasons which render the matter urgent;*

14. *reasons why the provisions of Part V111 of the Act should be waived; and*

15. *the reasons why the Applicant cannot be afforded substantial relief at a hearings in due course."*

6. On the question of urgency, the Applicant says that the matter is urgent

"on account of the fact that the unlawful act has been committed by the Respondent The Applicant is likely to be disciplined and dismissed by a body which is not lawfully constituted and he will be prejudiced thereby.

If the matter were to follow its normal course of application by the time it is heard and determined, I (sic) would have been disciplined and dismissed unlawfully by the fictitious body. I will therefore be deprived in his defence as he will not be granted substantial redress at a hearing in due course."

16. It is the court's view that the Applicant in this matter falls far short of the test set out in Rule 15 of this court's rules. The Applicant herein does not state when he was suspended, whether such suspension was communicated to him in writing or verbally (no letter of suspension is attached to his papers). He does not state the conditions of his suspension - arid whether he is suspended on full pay or without pay. Nor does he say whether he is aware of the reasons for his suspension.
17. Further he speaks of being disciplined and dismissed by a body that is not lawfully constituted. However, he does not state when he is to be disciplined and why. Nor does he state on what basis he has come to the conclusion that he will be dismissed even before he has been disciplined.
18. He states that the Respondent is not lawfully constituted but fails to state why he asserts this. In argument he stated that the new executive committee of the Respondent was elected into office contrary to clauses 5.1, 5.2, and 5.3 of the Respondent's constitution. However the constitution or a copy thereof is not attached to the application to enable the court to make its own prima facie finding thereon.
19. It is our view that the Applicant has not set forth explicitly the circumstances that render the matter urgent nor why the provisions of Part V111 of the **Industrial Relations Act 2000** as amended should be waived.

20. In the result the application must fail. There is no need for the court to consider the other points raised by Respondent. The application is dismissed. There will be no order as to costs.

The members agree.

A handwritten signature in black ink, appearing to read 'Nsibande', with a stylized initial 'N'.

S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT