

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 173/09

In the matter between:

SONNYBOY DLAMINI

APPLICANT

and

THE PREMIER LEAGUE OF SWAZILAND

RESPONDENT

CORAM:

S. NSIBANDE JOSIAH YENDE

PRESIDENT

NICHOLAS MANANA

MEMBER

MEMBER

MR. S. MNISI MR.

FOR APPLICANT FOR

O. NZIMA

RESPONDENT

RULING ON COSTS - 4TH JUNE 2009

The Applicant approached the court under a certificate of urgency seeking an order in the following terms:

"1. Dispensing with the usual and normal requirements of the Rules of Court in respect of notices, times limits and service of documents and that this matter be heard as one of urgency.

2. That a Rule Nisi do hereby be issued, calling upon the Respondent to show cause, on a date to be determined by the above Honourable Court why an order in the following terms should not be made final:

3. *That the withholding of the Applicants salary be set aside and be declared unlawful, null and void ab initio and of no force and effect;*
4. *Directing the Respondent to forthwith pay the Applicant its (sic) wages for the month ending March 2009 and subsequent months until the conclusion of the on going disciplinary hearing;*
5. *Granting an order for costs on an attorney and own client scale.*
6. *Tnat prayers 2.1 and 2.2 above operate with immediate effect pending final determination of this application.*
7. *Granting further and/or alternative relief."*

The Applicant is employed by the Respondent as an Accounts Clerk. It is common cause that on 2nd January 2009 he was suspended from work with full pay. On 20th February 2009, he received notice to attend a disciplinary hearing on 3rd March 2009. The disciplinary hearing did not take place on 3rd March and was re-scheduled on a few occasions but finally started on 24th March 2009.

Applicant states that he was not paid his salary on 25th March 2009 which was the date on which he expected same since he was paid on the 25 of each month. When he enquired about his salary, the Respondent ignored him. A letter from his attorney's seeking an explanation of the non-payment went unanswered. It was for this reason that the Applicant approached the Court for relief as set out in his notice of application.

The Respondent did not file any papers in opposition to the application and the following order was entered against the Respondent:

The Respondent is directed to forthwith pay the Applicant his wages for the month ending March 2009 and the subsequent months."

The Applicant has applied for costs at a punitive scale. The Respondent opposes a costs order and submitted that if the court was inclined to grant costs then costs on the ordinary scale should be granted because the Respondent acted swiftly in consenting to the substantive relief sought by the Applicant

The Applicant complained of the grossly unfair labour practice of stopping his pay without notice and the Respondent's refusal to respond to enquiries about the non-

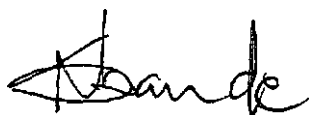
payment. For these reasons the court was implored to grant costs at the punitive scale.

The court has carefully weighed all the factors referred to by the parties. We find that this matter is on all fours with the case (referred to the court by Mr. Mnisi for the Applicant) of **Mduduzi Zulu v Principal Secretary Ministry of Natural Resources & The Attorney General IC Case No. 193/2008**. In that case the court referred to **Nel Waterberg Landbouwers Ko-op Vereniging 1946 AD 597** where it was held that by reason of special considerations arising from the circumstances which give rise to the litigation, the court may in a particular case consider it just to ensure, by a special award of costs that a successful party is not out of pocket in respect of the costs of the litigation.

We consider that special considerations arise from the circumstances of this case to award costs on a punitive scale. While the Respondent has acted properly in the conduct of the litigation and has not delayed finalization of the matter, the withholding of the Applicant's salary appears to have been a deliberate act by the Respondent. No explanation for the stoppage has been given even though the Court was told that the chairman of the Respondent's Board of Governors was quoted in the media saying the Applicant might have to forfeit his salary because he was now facing charges. He was quoted further as saying a decision had not been made yet in that regard. This was on 4th April 2009 when the Applicant had already discovered that his salary was being withheld and he had been notified through iita afameys that it be released. The chairman would have known by then that the Applicant had not been paid. We can only conclude that the withholding of Applicant's salary was reckless and malicious and could only have been calculated to cause him distress.

The stoppage of the Applicant's salary was not only an unfair labour practice but it was also a criminal offence in terms of Section 64 (a) of the Employment Act 1980 as amended. In our view that entitles the Applicant to a full recompense for the costs of this litigation.

10. We order that the Respondent pays the costs of the Application on the attorney-client scale.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT