IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO. 567/2009**

In the matter between:

BONGINKOSI DLAMINI **Applicant**

and

SiKHUMBUZO SIMELANE **1st Respondent**

CONCILIATION, MEDIATION AND ARBITRATION COMMISSION **2nd Respondent**

CORAM:

S. NSIBANDE JOSIAH YENDE **PRESIDENT**

NICHOLAS MANANA **MEMBER**

MEMBER

MS. L. NGCAMPHALALA MR. M. SIMELANE **FOR APPLICANT FOR RESPONDENT**

RULING ON POINTS IN LIMINE - 6/11/2009

1. The Applicant, an employee of the 2nd Respondent approached the court by way of motion supported by an affidavit and under a certificate of urgency seeking an order:

1. *"That the court dispense with the Rules of the above Honourable Court in terms of service, and time limits and hear this application as one of urgency.*

2. *Staying the execution of the decision made by 1st Respondent in the Disciplinary hearing dated the 7th of October 2009.*

3. *Setting aside the 1st Respondent's decision made and issued on October 7th 2009.*

4. *Directing that the Disciplinary hearing between the Applicant and the Second Respondent proceeds and the Applicant be allowed to present his defence.*

5. *That the Respondents pay the costs of this application in the event they unsuccessfully oppose it.*

6. *Granting any further and/or alternative relief as the court may deem appropriate."*

7. The Applicant filed a founding affidavit and a confirmatory affidavit in support of his application. He sets out that there is an on going disciplinary hearing of which the 1st Respondent is the chairman. He sets out further that the hearing was postponed on 13th September 2009 to 2nd October 2009 wherein it was expected to continue.

8. He states that on 2nd October 2009 his representative informed him that he was not going to be able to continue with the hearing that day on account of an unforeseen issue he was attending to in Mbabane. He was advised by his representative that the chairperson has been

advised of the need to have the matter postponed and the subsequent Monday had been discussed as a date to which the matter could be postponed. He says he was told by his representative that he would be advised of the date to which the hearing would be postponed in due course.

The Applicant states that on the 9th October 2009 he was called by the 2nd Respondent's acting human resource manager who told him to collect a certain letter. When he did, he discovered that to the letter was attached a ruling made by 1st Respondent. 1st Respondent's ruling was that since the Applicant and his representative had absconded the hearing with full knowledge that it was scheduled to proceed on 2nd October and that since no reasonable and substantive justification for the absence was given, the Applicant's (Respondent at disciplinary hearing) case was declared closed and the parties directed to file written submissions not later than 4.30 p.m. on 19th October 2009 failing which the chairman would finalize the matter in the absence of submissions.

It is this decision that the Applicant wishes to have set aside. At the first hearing of the matter, the court issued a rule nisi staying the operation of the 1st Respondent's decision pending the finalization of the application and the matter was postponed to 23rd October 2009 for argument.

The 2nd Respondent filed its answering affidavit and raised points of law namely that:

(i) There had been no compliance with Rule 6 (25) (a) and (b) of the High Court Rules in that the Applicant has not set out explicitly the circumstances that he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course;

(ii) The Applicant was applying for a final interdict in terms of prayer 2, yet there was no allegation in the founding affidavit showing that the requirements of a final interdict have been met;

(iii) That the Applicant sought to review and set aside the 1st Respondent's ruling without alleging the facts necessary and sufficient to enable the court to interfere with an on-going disciplinary hearing.

9. With regard to urgency the 2nd Respondent's gripe is that Applicant has made no allegation in his papers regarding urgency and that without explicit grounds being set out in the affidavit that set out what makes thp mp.tter urgent, then the court could not enroll the matter *p.r ~r.* urgent one.

10. In terms of Rule 15 of the Industrial Court Rules 2007, a party that applies for urgent relief shall set forth explicitly in his affidavit:

"(a) the circumstances and reasons which render the matter urgent;

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

12. *the reasons why the Applicant cannot be afforded substantial relief or a hearing in due course."*

9. The Applicant has not set forth explicitly the circumstances and reasons which render his matter urgent. He has not stated reasons why the provisions of Part V111 of the Act should be waived nor has he outlined why he cannot be can-wet-be afforded substantial relief at a hearing in due course. This court has consistently stated that since it does not normally take cognizance of disputes that have not been through the conciliation process prescribed by Part V111 of the Industrial Relations Act No. 1 of 2000 as amended the Applicant needs to satisfy the court not only that the matter is sufficiently urgent to justify the usual time limits prescribed by the Rules of Court being curtailed but also that there is good course for dispensing entirely with the conciliation process.

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10. In the absence of these allegations in his founding affidavit the Applicant has failed to meet the requirements and the application must fail. The point is upheld and the application is dismissed. There is no order as to costs.

S. MSIBANDE
PRESIDENT OF THE INDUSTRIAL COURT

The members agree.