

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 602/09

In the matter between:

HEZEKIEL SHABANGU

Applicant

and

SWAZILAND SECURITY GUARDS

Respondent

CORAM:

S. NSIBANDE JOSIAH YENDE

PRESIDENT

NICHOLAS MANANA

MEMBER

MEMBER

MR. B. E. MKOKO MR.

FOR APPLICANT FOR

S. MNISI

RESPONDENT

RULING ON POINT IN LIMINE - 19/11/09

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

"1. Dispensing with the normal forms and time limits provided for in the rules of the above Honourable Court and dealing with this matter as an urgent matter in terms of the Rule 6 (25) of the Rules of the above Honourable Court.

2. *Condoning any non compliance with the Rules of Court relating to time limits, manner of services of Court process and document and any other procedural requirements.*

3. *That a rule nisi do issue operating with immediate effect, calling upon the Respondent to show cause on a date to be determined by the above*

Honourable Court why prayer 3.1 herein below should not be made and confirmed and made a final order of this Honourable Court:

4. *Ordering the Respondent to comply with the memorandum dated 24th September 2009 in particular clause 2.1 and 2.2 immediately upon hearing this matter.*

5. *Ordering the Respondent to pay Applicant his full wages for the month of October 2009.*

6. *That the Memorandum of Agreement dated September 2009 be made an order of Court.*

7. *Costs of this application against the Respondent at Attorneys and own scale.*

8. *Further and/or alternative relief as the Court may deem appropriate."*

6. The application is opposed by the Respondent which has filed an answering affidavit in which it raised the following points in limine:

"4.1 That the matter is not urgent because no attempt whatsoever has been made to plead same in keeping with the Rules of Court but as well because the Applicant appears to be suggesting that urgency be inferred on the basis of an alleged financial difficulty. I have been advised and verily believe that financial difficulty is not a ground for urgency because all matters pending before this court are by Applicants who are in one way or the other in financial hardship. There is therefore no ground to treat the Applicant herein differently."

9. The Applicant did not file a Replying Affidavit.

10. In argument Respondent states that the Applicant has not met the requirements of Rule 15 of the Industrial Court Rules 2007 and that he has failed to set forth explicitly the circumstances and reasons that render the matter urgent; the reasons why the provisions of Part V111 of the Act should not be waived; and the reasons why the Applicant cannot be afforded substantial relief at a hearing in due course.

11. Applicant's response was that the matter is urgent because there is an injustice being perpetrated by the Respondent. In his papers the Applicant puts forth the following grounds of urgency:

"6.4 I humbly submit that the matter is urgent in that notwithstanding my various protestations, the Respondent has not shown any interest in resolving this matter save to say I was suspended until this matter can be discussed at CM AC which the matter already finished and concluded by memorandum dated 24th September 2007."

12. In **Vusi Gamedze v Mananga College IC Case No. 267/06** this Court stated *"No doubt it is the function and duty of this Court to grant relief to victims of injustice and unfair labour practices, but this can equally be achieved in terms of the normal procedures and time limits. It is only where the Applicant will be substantially prejudiced if the matter is not summarily dealt with that the Court will permit an urgent involvement."*

13. In this matter, the Applicant has made no attempt to comply with Rule 15 of the Industrial Court Rules 2007. Applicant does not set forth explicitly reasons why the provisions of Part V111 of the Act should be waived nor does he state why he cannot be afforded substantial redress at a hearing in due course. In the absence of these peremptory allegations being made by the Applicant in his founding affidavit, the court is not satisfied that the matter is sufficiently urgent as to justify the usual time limits being curtailed nor is the good cause shown for dispensing entirely with the conciliation process.

14. In the circumstances, the application is dismissed.

The members agree.

**S. NSIBANDE PRESIDENT OF THE
INDUSTRIAL COURT**