



IN THE INDUSTRIAL COURT OF SWAZILAND

JUDGEMENT

CASE NO.

172/2012

In the matter between:-

**MINISTER OF LABOUR AND
SOCIAL SECURITY**

APPLICANT

And

**SWAZILAND TRANSPORT AND
ALLIED WORKERS' UNION**

1ST RESPONDENT

**SWAZILAND COMMERCIAL AMADODA
TRANSPORT ASSOCIATION**

2ND RESPONDENT

Neutral Citation : *Minister of Labour and Social Security V
Swaziland Transport & Allied Workers Union and Another*

(172/2012) [2012] SZIC 172 (16 May 2012)

Coram: **DLAMINI AJ,**

*(Sitting with D. Nhlengetfwa & P. Mamba- Nominated
Members of the Court)*

Heard : **21 May 2012**

Delivered : **28 May 2012**

Summary: ***Labour law - Application in terms of section
89(1) of the Industrial Relations Act 2000 (as
amended) - Applicant seeks to interdict and restrain***

Respondents and their members from participating in a strike action. Applicant has to prove that national interest is threatened or affected to the satisfaction of the Court.

- [1] The Applicant has applied to this court on a certificate of urgency for an order interdicting and restraining the Respondents and their members or any person acting at their behest or concert from embarking on or going on with, promoting, encouraging, supporting or participating in the strike action called by the 1st Respondent.
- [2] When this matter was first mentioned before this court on 16 May 2012, and following application by the Applicant's Counsel we issued an interim order, the effect of which was that the matter was enrolled as urgent and further interdicting the strike action. The matter was thereafter postponed to the 21st May 2012 for arguments.
- [3] The Applicant has filed the present application in his capacity as the Minister of Labour and Social Security and by virtue of Section 89 (1) of the Industrial Relations Act 2000 (as amended). Section 89 (1) provides as follows;

“If any strike or lockout is threatened or taken, whether in conformity with this Act or otherwise, and the Minister considers that the national interest is threatened or affected thereby, he may make an application to the Court for an injunction restraining the parties from commencing or continuing such action, and the Court may make such order thereon

as it considers fit having regard to the national interest”

- [4] The Applicant in this matter makes the following allegations in his founding affidavit at paragraphs 7, 13 and 14;

“On Friday the 11th May, 2012 the 1st Respondent and/or their members embarked upon an unlawful strike action in terms of which they withdrew their labour, and thereby depriving members of the general public use of public transport. Members of the Second Respondent are also partaking in the illegal action by refusing to conduct their transport business in terms of the Manzini municipal by-laws and regulations... (Paragraph 7)

The effect of the Respondents’ and/or their members’ unlawful conduct has been this that commencing Friday 11th May 2012, they have purposefully and deliberately withheld the provision of public transport services to members of the general public, and they are on record saying that this state of affairs is to continue on intermittent occasions as they shall determine. This state of affairs is highly prejudicial to the national interest as will morefully appear in paragraph 14. (Paragraph 13)

On the two days the Respondents and/or their members carried out their action the effect of it was so devastating and frustrating such that it grounded the operations of the whole town and inconvenienced members of the general public. Clearly the conduct of Respondents and/or their members is highly prejudicial to the national interest. (Paragraph 14)

In particular schoolchildren, teachers, the sickly, workers, the elderly and business are suffering acute prejudice and/or

socio-economic hardship as a result of the unavailability of public transport for part of the population due to the strike action.

The strike action has the effect of endangering the life, health or personal safety of a considerable part of the Swazi population, as violence has erupted particularly in the Manzini main bus terminus and surrounding areas.”

- [5] The Applicant further states that he has brought the present application because he is of the view that it is in the national interest that he institutes same and to stop the Respondents from continuing with their unlawful action.
- [6] The 1st Respondent opposes the application by the Applicant and had filed the necessary papers in opposition thereto wherein it raised some preliminary points of law and further pleaded to the merits. The 2nd Respondent on the other hand indicated that it would abide by the decision of the court. Nonetheless its Secretary General filed an answering affidavit in which he denies that members of the 2nd Respondent are partaking in the strike of called by the 1st Respondent.
- [7] As pointed out afore, the 1st Respondent vehemently opposes the present application. In its answering affidavit deposed to by the Secretary General, Simanga Shongwe, he raises *points in limine* challenging the urgency of the matter and the interdict sought.
- [8] On the date set for arguments the court directed that both the *points in limine* and the merits of the matter be argued simultaneously.

- [9] Attorney Khumalo for the Applicant pointed out that the present application seeks to interdict the 1st Respondent from engaging and/or continuing with an unlawful strike action. He went on to submit that in terms of section 89(1) of the Industrial Relations Act 2000, as amended, where the Minister considers that national interest is threatened or affected, the Minister has to move an application to this Court for an injunction restraining the parties from commencing or continuing with such strike action, which is what the Applicant Minister has done in the present proceedings.
- [10] Khumalo further referred the court to section 2 of the Industrial Relations Act whereat the word strike is defined. He argued that in the present matter the 1st Respondents' members engaged in a complete stoppage of work on 11 May 2012, and that this was done with a view of inducing compliance with a demand by them not to operate from the satellite bus terminus.
- [11] Counsel for the Applicant further submitted and argued before this Court that the Applicant had satisfied the requirements of an interdict as well as the elements of urgency and accordingly prays for an order in terms of the notice of motion.
- [12] Representing the 1st Respondent Mr. Tfwala sought to dispel the notion that members of the 1st Respondent were on strike. He submitted that in terms of a petition addressed to the Ministries of Housing and Urban Development and of Public Works and Transport members of the 1st respondent had alerted Government that they would be taking holidays and/or leave collectively at any time of their choosing. He therefore wondered why they were said

to be on strike when in actual fact they were on collective leave and holiday on the day(s) they are alleged to have been on strike.

[13] Tfwala went on to address the Court raising a number of peripheral issues not exactly dealing with the present application by the Minister of Labour and Social Security, and the Court had to now and again remind him that the paramount issue before it was on the section 89 application brought by the Applicant. Some of these issues he raised included the alleged 'unlawful' deregistration of the employees federation, that the matter was still pending before the Labour Advisory Board and the High Court, the interpretation of the High Court order etc. Tfwala was so preoccupied with the submissions on the peripheral issues that he even forgot that he had raised *points in limine*. He nonetheless acknowledged the right of the Minister to bring the present application in terms of section 89 but pointed out that even then, the Minister should have first engaged members of the 1st Respondent before running to Court in the manner he did.

[14] As a starting point we deem it necessary that this Court first deals with the preliminary points raised by the 1st Respondent's representative, even though he decided not to deal with them in his oral arguments. The first point is on urgency. The allegation here is that the Applicant has not set out facts on which the Court should find that the matter is urgent. This point is clearly misguided. This we say because at paragraph 18 of the Applicant's founding affidavit the Minister states the grounds upon which he relies to have the matter enrolled as urgent. Even the certificate of urgency by a Mr. Vilakati addresses this issue. We accordingly dismiss this point in limine as it is clearly without merit.

[15] The other point in limine is on the interdict sought by the Applicant herein. As much as we tried, we failed to make sense of what exactly Tfwala was trying to raise in his papers on this point. In the answering affidavit under this point he reproduces the Applicant's prayers as they appear in his notice of motion word for word. Thereafter he goes to town mentioning issues which have nothing to do with the preliminary point he raised. He does not even attempt to deal with the point itself as raised. We accordingly dismiss this preliminary point as well as it is also misguided and is devoid of merit. Perhaps we should mention here that for matters of this magnitude parties should ensure that they instruct professional attorneys who will be able to professionally represent and articulate their rights and interests before courts. This will in turn also make the work of this court much easier.

[16] Coming to the merits of this matter, and as pointed out earlier, the Minister seeks to interdict the Respondents from continuing with an unlawful strike action called by the 1st Respondent. It is common cause that members of the 1st Respondent are public transport drivers and conductors. In bringing the present application the Minister is empowered by section 89(1). The 1st Respondent, through its Secretary General, however denies that its members are on strike. He states instead that they are on what he calls collective 'holiday' and 'leave'. Mr. Shongwe however does not bring any proof to substantiate his contention that the drivers and conductors are indeed on holiday or leave. And in terms of the Employment Act 1980 such holiday or leave is to be given by the employer, the 2nd Respondent herein. There is no evidence before this Court that members of the 2nd Respondents, in their capacity as employers of the 1st Respondent's members, gave them official 'holidays' or 'leave' as they allege.

[17] In seeking the injunctive relief the Applicant has to prove to the satisfaction of this Court that national interest is threatened or affected by the action of the Respondent. And in this regard the Applicant states that as a result of the strike action the public transport system in Manzini and other areas has been adversely affected and brought to a virtual standstill. The Applicant has also alleged that this has had the effect of causing serious inconvenience and general hardship on the day to day life of those wholly dependent on public transport for their daily economic, educational and other important activities. He further contends that school children, workers, teachers, the sickly and elderly are suffering prejudice and acute socio-economic hardship as a result. This has the effect of endangering the life, health and personal safety of the population, especially those reliant on the public transport system.

[18] The aforementioned assertions by the applicant are clear indicators that national interest has not only been threatened but has been adversely affected by the unlawful action of the 1st Respondent. And it is the duty of this Court, having regard to the national interest, to interdict such conduct. We accordingly find that the Applicant has proved on a balance of probabilities and to the satisfaction of this Court that indeed national interest is not only threatened but affected by the action of the 1st Respondents. As such the Applicant is entitled to the injunctive relief it seeks.

[18] This should not be the end of the matter though. Government needs to seriously engage all the stakeholders involved in the impasse on this issue, with a view of finding a lasting solution which will in turn ensure that interests of all parties are taken into

account to achieve a consensual equilibrium, as is required by public policy and public interest.

[19] The Court accordingly makes orders as follows;

a) The points in limine raised by the 1st Respondents are hereby dismissed.

b) The 1st Respondent and its members or any person acting at their behest or in concert with the 1st Respondent be and are hereby interdicted and restrained from embarking on or going on with, promoting, encouraging, supporting or participating in the strike action called by the 1st Respondents.

c) We make no order as to costs.

The members agree.

DELIVERED IN OPEN COURT ON THIS 28TH DAY OF MAY 2012.

T. A. DLAMINI
ACTING JUDGE - INDUSTRIAL COURT

For Applicant : *Mr. S. Khumalo.*

For 1st Respondent : *Mr. B. Tfwala.*

For 2nd Respondent : *Mr. L. Mzizi.*