



**IN THE INDUSTRIAL COURT OF SWAZILAND**  
**JUDGEMENT**

**CASE NO. 72/2009**

In the matter between:-

**MESHACK DLAMINI & OTHERS**

**APPLICANTS**

AND

**THE PRINCIPAL SECRETARY MINISTRY  
OF AGRICULTURE & CO-OPERATIVES**

**1<sup>ST</sup> RESPONDENT**

**THE PRINCIPAL SECRETARY MINISTRY  
OF PUBLIC SERVICE**

**2<sup>ND</sup> RESPONDENT**

**THE CHAIRMAN OF THE CIVIL SERVICE  
BOARD**

**3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL**

**4<sup>TH</sup> RESPONDENT**

**Neutral citation :**        *Meshack Dlamini & Others v Principal Secretary  
Ministry of Agriculture & Others [2013] SZIC 34/2013  
(15 November 2013)*

**CORAM**            :        **DLAMINI J,**  
*(Sitting with D. Nhlengetfwa & P. Mamba Nominated  
Members of the Court)*

**Written Submissions filed:**        **04 JULY 2013**

**Delivered**                                :        **15 NOVEMBER 2013**

*Summary:*                    *Practice – Application - Applicants instituting present proceedings on certificate of urgency,  
however matter later takes normal course in terms of Rule 14 despite matter being afflicted with*

*disputes of fact – Description of Applicants and their addresses also not clearly and concisely set out – Applicants granted leave to reinstitute proceedings in terms of Rule 7.*

1. Meshack Dlamini and an unidentified and unspecified number of his colleagues are the Applicants in this matter. They brought the present application on a certificate of urgency seeking relief as follows;

- *Dispensing with the rules of this Honourable Court regarding time, manner and form of service and to hear this application as one of extreme urgency.*
- *Condoning the Applicant's non-compliance with the Rules of the above Honourable Court.*
- *Interdicting and / or restraining the termination of the Applicants' appointment by the First Respondent, pending the finalization of the hearing of this application.*
- *Directing that a Rule Nisi do hereby issue returnable on a date to be determined by this Honourable Court calling on the Respondents to show cause why;*
  - *The Applicants should not be declared as fully recognized employees of the Swaziland Government, backdated to the enactment of THE ESTABLISHMENT CIRCULAR NUMBER 8 OF 2003.*

- *The Applicants should not be given terms and conditions of employment that reflects the status of being Government employees rather than casual labourers.*
- *The Respondents should not pay the costs of this application.*
- *Granting Applicants such further and / or alternative relief as to this Honourable Court may seem meet. (Sic)*

2. The application is opposed by the Respondents. The Attorneys representing the respective litigants requested to file written submissions in this matter, urging the Court to make its decision based on same. They were of the view it would be unnecessary to motivate their respective arguments orally. And the Court granted them their wish in that regard. As pointed out afore, the Applicants had initially brought this matter on a certificate of urgency urging the Court to dispense with the rules relating to time limits, manner and form of service. However from the Court record it would seem the urgency of the application was no longer pursued hence the matter now taking normal course. The Court though is left to wonder as to why it was even necessary in the first place to launch the present proceedings in the manner they were when the matter would eventually take its normal course.
3. The case of the Applicants is that they were employed by the Respondents as Dipping Tank Assistants and stationed in the four Regions of the

country. They state that they were employed by the Government under the Ministry of Agriculture and Cooperatives from as back as when the country attained independence in 1968 and the early 1970s. They further allege that their services were terminated in March 2009. They accordingly now seek a declaratory order to the effect that at the time of their termination they were permanent and pensionable employees of the Swaziland Government, and that they should be treated as such for purposes of paying their pension benefits.

4. In its pleadings in opposition to the Applicants' claim, the Respondents admit that Applicants are Dip Tank Assistants for various communities in the Kingdom. However, the Respondents deny that they are government employees, clarifying instead that they are elected and appointed by their communities. It is further stated that the Government only provides the Applicants with an allowance in appreciation of the service they render to their communities.
5. The Respondents also raise issue with the manner in which the Applicants have been described in the pleadings. According to the founding affidavit the Applicants are Meshack Dlamini (the Deponent to the founding affidavit) who is the Chairperson of the Dipping Tanks Committee and represents all the other Applicants in these proceedings. The other

Applicants are only described as Dipping Tank Assistants in the various regions in the Kingdom of Swaziland. That is all the information the Court has in relation to the Applicants. Whereas a close scrutiny of the peremptory rule 14(5)(a) indicates that the parties have to be clearly and concisely described so that the legal capacity of each litigant cited can be determined for instance. This rule states that the names and description of the parties has to be contained in the founding affidavit. The addresses of the Applicants have also not been set out. As it is, the Court is not aware of the names, description and addresses of the Applicants. The Court is not even aware as to how many they are in number.

6. There is also another challenge with the application of the Applicants in this matter. This is on the choice preferred in launching the present proceedings. It is without doubt that the Rules of this Court permit the launching of matters on motion proceedings provided that no dispute is reasonably foreseen. If motion proceedings are the preferred choice, the Applicant must fully consider the matter on the information at his disposal, its merits and demerits and properly consider the probabilities of whether, with the information at his disposal, a dispute is likely to arise. Should it, for instance, be likely that some issues may require to be properly ventilated by oral evidence then motion proceedings would not be appropriate.

7. In the present matter before this Court it is particularly clear from their respective affidavits that whereas the Applicants claim that the Respondents employed them as Dipping Tank Assistants, this is denied by the Respondents who state instead that they are not employees of Government. And this has always been the defense of the Respondents even at conciliation stage at CMAC. The Respondents claim that the Applicants are selected by their communities to assist in each community where dipping tanks are located. The Respondents further aver that the Ministry of Agriculture could not have employed the Applicants as this is the exclusive prerogative of the Civil Service Commission. This for instance, is one of the issues that cannot be determined without recourse to oral evidence. This Court would need to thoroughly interrogate the question of the alleged employment of the Applicants by Government and the issue of what role the respective communities play in appointing them. And this exercise cannot be achieved without the aid of oral evidence. Another glaring dispute is on the pay of the Applicants. They allege to have been paid E200.00 per month much against Establishment Circular No. 8 of 2003 which apparently prescribes a minimum of E969.00 per month. The Respondents on the other hand allege that the said Circular 8 of 2003 has nothing to do with the Applicants as they are not part of Government Establishment, and further that the Applicants are paid at a daily rate based on the number of dipping sessions per week. This is yet another clear indicator that indeed this matter

cannot be adequately and properly determined without *viva voce* evidence. This matter is afflicted with disputes of fact which, with reasonable foresight, ought to have been foreseen. The disputes are so material such that they conclusively render the matter not capable of proper determination on motion proceedings. It is certainly not proper that an Applicant should commence proceedings by motion with the full knowledge of the probability of a protracted inquiry into disputed facts not capable of easy ascertainment, with the hope of inducing the Court to refer the matter to oral evidence.

8. Be that as it may, the Applicants need to know their fate though. They need to know of their status. Are they employees of Government or not? It is unfortunate that the Court is not able to determine this issue at this stage because of the aforementioned concerns. But this being a Court of equity, the Court orders that the Applicants are granted leave to reinstitute their claim in terms of rule 7 within 21 (twenty one) days hereof and under the same case number and certificate of unresolved dispute. Thereafter all subsequent pleadings are to be filed in terms of the rules of this Court. The Court makes no order as to costs.

The members agree.

---

**T. A. DLAMINI**  
**JUDGE – INDUSTRIAL COURT**

**DELIVERED IN OPEN COURT ON THIS 15<sup>th</sup> DAY OF NOVEMBER 2013**

*For the Applicants : Attorney M.Z. Mkhwanazi (Mkhwanazi Attorneys)*

*For the Respondents : Attorney T. Vilakati (Attorney General's Chambers)*