



IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 184/17

In the matter between:

**SWAZILAND MANUFACTURING AND
ALLIED WORKERS UNION (SMAWU)**

Applicant

and

**AMALGAMATED TRADE UNION OF
SWAZILAND (ATUSWA)**

1st Respondent

COMMISSIONER OF LABOUR

2nd Respondent

Consolidated with:

CASE NO. 186/17

**AMALGAMATED TRADE UNION
OF SWAZILAND (ATUSWA)**

Applicant

And

**JUSTICE THINTITHA MTSETFWA
ROSE HADZEBE
POLYCARP STEWART
ALFRED DLAMINI
GABSILE (FAITH) MKHONTA
MIRRIAM ZWANE
SWAZILAND MANUFACTURING AND
ALLIED WORKERS UNION (SMAWU)**

1st Respondent

2nd Respondent

3rd Respondent

4th Respondent

5th Respondent

6th Respondent

7th Respondent

Neutral citation: *Swaziland Manufacturing and Allied Workers Union (SMAWU) & Others v Amalgamated Trade Union of Swaziland (ATUSWA) 184/17 [2018] SZIC 41 (May 25 , 2018)*

Coram: N. Nkonyane, J
(Sitting with G. Ndzinisa and S. Mvubu
Nominated Members of the Court)

Heard submissions: 18/05/18

Delivered Ruling: 25/05/18

RULING ON POINTS OF LAW

1. This is an application for stay of execution of this Court’s judgement delivered on 26th April 2018. The application was instituted by the Applicant under a certificate of urgency.
2. In the certificate of urgency, the Applicant’s representative stated as the ground for urgency that rentals and staff salaries are now due and that if the stay is not granted, the operations of the Applicant will be hampered. Again, in paragraph 28.1 of the founding affidavit, the deponent thereof stated that the matter is urgent because subscriptions will not be remitted and the Applicant will be “crippled and doomed to collapse.”

3. On the question of urgency, the view of the Court is that that issue has now been overtaken by events as the parties have since filed all the sets of papers before the Court. There is no evidence on record that the 1st Respondent did indicate to the Court when the matter first appeared that it was reserving its right to pursue the question of urgency later on when the matter is finally argued in Court.

4. The evidence before the Court revealed that the Applicant has written correspondence to some of the employers telling them to maintain the status quo because the Applicant has filed an appeal against the Court's judgement. The essence of the correspondence was to inform the employers to ignore the Court order. This conduct by the Applicant led to the 1st Respondent to raise a point *in limine* in its answering affidavit to the effect that the Applicant is approaching the Court with dirty hands and that the Applicant should not be entertained by the Court as it has engaged in self-help. In Court the Applicant's representative first tried to argue that that was not the message that the letters written to the employers was sending. He then argued in the alternative that the person who wrote the letters was a layman and did not know that the filing of an appeal against the judgement of the Industrial Court did not result in automatic stay of execution. Upon realizing that these arguments were hollow, the Applicant's representative then told the Court that the letters have since been withdrawn.

5. There is no doubt to the Court that the Applicant's representative's explanation from the bar was false and an afterthought. If it was true

the Applicant could simply have annexed the letters of withdrawal to its replying affidavit. The Applicant did not do that. The Applicant also failed to file the letters of withdrawal in Court from the bar. Further, nowhere in its replying affidavit did the deponent state that the letters have since been withdrawn.

6. Dealing with the doctrine of clean hands, Nathan CJ (as he then was) in the case of **Photo Agencies (Pty) (Ltd) v The Royal Swaziland Police & Another 1970 SLR 398** after citing with approval the case of **Mulligan v Mulligan 1925 WLD 165**, stated that;

“...Before a person seeks to establish his rights in a court of law he must approach the court with clean hands...”

The Court aligns itself with the above legal formulation. In casu, the Applicant having already told the employers to ignore the Court order, the Applicant is now only seeking a Court order to legitimize its unlawful conduct. A similar issue came before the Court in the case of **Thomas Investments Corporation (Pty) LTD v Greans Investments (Pty) LTD Case No. 2392/2011 (HC)**. Maphalala PJ (as he then was) upheld the point of law raised relating to unclean hands against the party who had engaged in self-help before coming to the High Court.

7. In its replying affidavit the Applicant raised a point of law relating to lack of authority of the deponent of the answering affidavit. A resolution by the National Executive Committee (NEC) of the 1st

Respondent has since been filed. This point of law is therefore dismissed.

8. The 1st Respondent also raised a point of law related to the jurisdiction of the Industrial Court of Eswatini. It was argued that the judgement appealed against, and against which the stay of execution is sought was issued by the Industrial Court of Swaziland and not the Industrial Court of Eswatini. In response to this point of law a Government Gazette dated 11th May 2018 was filed referring to the declaration of change of Swaziland name. In terms of Section 1(2) thereof, it is stated that the ***“Notice shall be deemed to have come into force on the 19th April 2018.”*** This point of law is therefore dismissed.
9. The 1st Respondent also raised a point of law that the deponent to the founding affidavit has no authority. This point of law was however abandoned by the 1st Respondent.
10. The Court has considered all the arguments by the parties and has come to the conclusion that the point of law relating to unclean hands ought to be upheld.
10. The Court will accordingly make the following order.
 - a) *The application is dismissed.*
 - b) *There is no order as to costs.*
11. The members agree.

A handwritten signature in black ink, consisting of a circular mark containing the letters 'NN' followed by a series of connected, flowing lines.

N.NKONYANE

JUDGE OF THE INDUSTRIAL COURT OF SWAZILAND

For Applicant : *Mr. A. Fakudze*
(Labour Law Consultant)

For 1st Respondent: *Mr. T.C. Mavuso*
(Attorneys at Motsa Mavuso Attorney)