



**IN THE INDUSTRIAL COURT OF ESWATINI**

**EX TEMPORE RULING**

**Case No. 04/19 (B)**

In the matter between:

**MAX MKHONTA**

Applicant

**And**

**ROYAL SWAZILAND SUGAR CORPORATION LTD**

1<sup>st</sup> Respondent

**MUHAWU MAZIYA N.O**

2<sup>nd</sup> Respondent

**Neutral citation:** Max Mkhonta V Royal Swaziland Sugar Corporation Ltd & Another (04/19 (B)) [2019] SZIC 37 (15 April 2019)

**Coram:**

**S. NSIBANDE JP**

(Sitting with N.Dlamini and M.P. Dlamini Nominated  
Members of the Court)

**Date Heard:** 15 April 2019

**Date Delivered:** 15 April 2019

## EX TEMPORE RULING ON POINTS OF LAW

[1] The Applicant seeks, primarily, an interim order interdicting and restraining the Respondent from continuing with an intended disciplinary acting pending full compliance with the judgment of this Court, issued by Msimango AJ on 28<sup>th</sup> February 2019 and/or pending determination of the Application for Review, currently pending at the High Court.

The application is opposed and the Respondent's main point in opposition is that the Applicant ought to have approached the chairman of the disciplinary enquiry with his preliminary complaints regarding the Respondent's conduct *visa vis* the judgment of this court handed down on 28<sup>th</sup> February and on the issue of the Review application currently pending before High Court before approaching this Court.

[2] On the principles set out in **Ndoda Simelane v National Maize Corporation (Pty) Ltd 453/06** – the chairperson of the disciplinary enquiry has the discretion to decide if the charges brought against the applicant contain charges that this Court, on 28th February 2019, found to be duplicated and charges that are time bared and therefore unfair (in terms of the disciplinary code.); he is yet to exercise his discretion on the issues and must be allowed to do so – the Court being loathe to usurp the

discretion of a disciplinary chairperson unless he has unreasonably fettered or abdicated his discretion. An employee called to a disciplinary enquiry is expected to appear there and place before the chairperson all preliminary issues he may have with such chairperson who is seized with the matter.

The Applicant referred the Court to the case of **Golding v Regional Tourism Organisation of Southern Africa and Others (J2501/17)** for the proposition that this Court had the jurisdiction to grant an interim interdict pending finalisation of an application in the High Court, and further that the Applicant was entitled to apply for the interdict in this Court directly. It seems to me that the Golding case is distinguishable from the case currently before Court on two basis;-

- (i) In the Golding case, the Applicant had raised the issue of a matter pending before the High Court before the disciplinary chairman. In this case it has not be raised;
- (ii) Golding was the Applicant with a pending application in the High Court challenging the lawfulness of resolutions of the Board – in effect he was seeking the stay of the disciplinary proceedings pending the finalisation of his application in the High Court. In the current case the application pending before the High Court seeks to review and set aside the decision of 28<sup>th</sup> February 2019 and is not an

application aimed at affirming the Applicant rights to administrative justice. There is no application before the High Court instigated by the Applicant seeking to challenge any action undertaken by the Respondent.

On that basis the application is dismissed. The issue of costs was raised by the Respondent and in our view we do not find that this is an appropriate matter in which to lumber the applicant with costs – his application is neither frivolous nor vexatious and is not made in bad faith. In the circumstances there is no order as to costs.

The Members agree



S. NSIBANDE

**PRESIDENT OF THE INDUSTRIAL COURT**

**For Applicant:** Mr. M.L. Ndlangamandla (M.L. Ndlangamandla Attorneys)

**For Respondents:** Mr. Z. Hlophe (Magagula Hlophe Attorneys)