IN THE INDUSTRIAL COURT OF ESWATINI

JUDGMENT

Case No. 318/19 (B)

In the matter between:

MBONGWA DLAMINI Applicant

And

THE PRINCIPAL SECRETARY

MINISTRY OF EDUCATION AND TRAINING 1st Respondent

THE CHAIRMAN TEACHING SERVICE

COMMISSION 2nd Respondent

THE ATTORNEY GENERAL 3rd Respondent

Neutral citation: Mbongwa Dlamini V Principal Secretary Ministry of Education and Training and 2 Others *(318/2019(B))* [2019] *SZIC 85* (06 November 2019)

Coram: **S. NSIBANDE JP**

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

Heard: 29 October 2019

Delivered: 06 November 2019

JUDGMENT

[1] On 17th October 2019, the Applicant, Mbongwa Dlamini launched an application in this Court under case No. 318/2019 for an order declaring that the Principal Secretary in the Ministry of Education and Training has the power to withdraw a written complaint about the conduct of a teacher which complaint had been forwarded to the Teaching Service Commission in terms of **Section 15 (3) of the Teaching Service Regulations of 1983** and further directing that the said Principal Secretary withdraw the complaint about the Applicant that it forwarded to the Teaching Service commission (the TSC).

[2] The application has been set down on the roll for hearing on 12th November 2019. The aforementioned Principal Secretary, the Chairman of the TSC and the Attorney General were all served with the application on 17th October 2019. On 24th October they filed their Notice of Intention to oppose.

[3] In a nutshell, the application arises from a complaint referred to the TSC by the Schools Manager regarding Applicant's conduct at work. The complaint was

referred to the TSC for disciplinary action and the TSC has set into motion a disciplinary process against the Applicant and had called the Applicant to appear before it on 23rd October 2019. The very same complaint has, by consent of the Principal Secretary, the Schools Manager and the Applicant been brought before the Labour Commissioner in terms of **Section 82 of the Industrial Court Relations Act 2000 (as amended)** following a request by the Swaziland National Association of Teachers (SNAT) for the intervention of the Labour Commissioner. Despite this agreement, the TSC appears determined to proceed with its disciplinary process and appears unwilling to allow the Labour Commissioner intervention or the Court process set for 12th November run to their conclusion.

[4] The TSC's unwillingness to halt the disciplinary hearing has led the Applicant to launch the current urgent application in which he seeks an order in the following terms;

"1. Dispensing with the usual forms and procedures and time limits relating to the institution of proceedings and allowing and this matter to be heard as a matter of urgency;

2. Condoning any non-compliance with the Rules of Court relating to notice and service of Court process;

3. *That a rule nisi do issue calling upon the Respondents to show cause on a date to be determined by the above Honourable Court, why prayer 3.1 should not be made final order (sic)*

3.1 The disciplinary hearing convened by the Teaching Service Commission (TSC) against Applicant be stayed of pending finalization of the matter under case No. 318/2019

4. *That prayer 3.1. operates with immediate and interim effect pending finalization of the matter;*

5. *Costs of suits to be awarded against the Respondents jointly and/or severally in the event of opposition of this application.*

6. *Granting the Applicant further and/or alternative relief."*

[5] The Applicant, in a nutshell seeks to stop his disciplinary enquiry before the 2nd Respondent until the matter under case No. 318/2019 pending before this Court, is finalised. He seeks to do so on the basis that the Labour Commissioner has by agreement of the parties intervened in the dispute that led to the charges he faces in the disciplinary hearing. He claims that the potential for irreparable harm or prejudice lies in that should he be successful in the Court matter, such success will be academic because the disciplinary enquiry will have proceeded in any event.

[6] The Respondents opposed the application and raised the following points *in limine:*

6.1 Lack of urgency;

6.2 Absence of prospects of success;

6.3 Lack of irreparable harm.

At the hearing of the matter the point with regard to lack of urgency was not argued as the Court indicated it had been overtaken by events. This was because an order with interim effect was granted on 22nd October 2019. In enrolling the matter on that date and granting the interim order the Court would have been satisfied that the matter was sufficiently urgent.

[7] The Respondent raised further points from the bar i.e (i) that the Applicant had not addressed the requirements of a clear right, that nothing was said by the Applicant on what clear right he sought to protect.

(ii) lack of averments regarding the balance of convenience; and

(iii) lack of averments on alternative remedy – that the Applicant had other remedies in case he was aggrieved by the ruling of the TSC.

[8] The points raised by the Respondent appear to us to touch upon the merits of the case. Firstly, it is clear from the papers that the applicant seeks to protect his right

to administrative justice. He has raised issues of harassment and victimization regarding the very disciplinary hearing the Respondent appears eager to proceed with. It is difficult for the Court reading the founding affidavit to agree with the respondents that the applicant has not satisfied the requirements of setting out what clear right he seeks to protect.

[9] Secondly, for the court to decide whether the applicant has prospects of success at the hearing of the main matter one has to go into the merits, to look at the affidavit and the matters raised therein. One has to consider that the intervention of the Labour Commissioner is one sanctioned by law through **Section 82** of the **Industrial Relations Act 2000** (as amended) and consider whether the intervention of the Labour Commissioner amounts to interference with the constitutional mandate of the 2nd Respondent. The actions of the 1st Respondent cannot in our view, be viewed in isolation following such intervention. Making those considerations seem to us to be usurping the powers of the court before whom that application will be heard which, in our view, is not proper.

[10] We are accordingly of the view that these matters are best argued on the merits and consequently make the following order:

(Refer to paragraph 25 of **High Court Case No. 449/15 Hlobsile Ndzimandze v Civil Service Commission, Swaziland Government Accountant General N.O. and Attorney General N.O.**)

(a) **The points in limine are dismissed**.

(b) **Costs will be costs in the course.**

The members agree.

S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For the Applicant: Mr A. Fakudze

For the Respondents: Ms N. Xaba (Attorney General)