



**IN THE INDUSTRIAL COURT OF ESWATINI**

**JUDGMENT**

Case No. 56/20

In the matter between:

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

Applicant

And

**PREMIER SWAZI (PTY) LTD**

1<sup>st</sup> Respondent

**SAMUEL DLAMINI**

2<sup>nd</sup> Respondent

**ZANELE DLAMINI**

3<sup>rd</sup> Respondent

**ZWELITHINI SIHLONGONYANE**

4<sup>th</sup> Respondent

**MAJAHODVWA GAMA**

5<sup>th</sup> Respondent

**THIZA MAVIMBELA**

6<sup>th</sup> Respondent

**LUCKY DLAMINI**

7<sup>th</sup> Respondent

**VICTOR ZWANE**

8<sup>th</sup> Respondent

**THEMBELIHLE TSABEDZE**

9<sup>th</sup> Respondent

**SIFISO DLAMINI**

10<sup>th</sup> Respondent

**ANDREAS MNISI**

11<sup>th</sup> Respondent

**DERRICK DLAMINI**

12<sup>th</sup> Respondent

**Neutral citation:** Swaziland Manufacturing and Allied Workers Union v Polycarp Stewart & 4 Others (56/2020) [2020] SZIC 163 (10 December 2020)

**Coram:** **NSIBANDE S. JP**

(Sitting with Nominated Members of the Court Mr M. Dlamini and Mr. E.L.B. Dlamini)

**Heard:** 13 August 2020

**Delivered:** 10 December 2020

### **JUDGMENT**

[1] The Applicant, has approached the Court on a certificate of urgency for an order in the following terms:

- “1. Dispensing with the normal and usual time limits relating to the institution of proceedings and allowing this matter to be heard as a matter of urgency;*
- 2. Condoning my 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 prayers 3.1 – 3.3 should not be made final order (sic):-*
  - 3.1 *Interdicting and restraining the Respondent from proceeding with the on-going pre-retrenchment consultation;*
  - 3.2 *Ordering and directing the Respondent to give notice of redundancies of Applicant's members;*
  - 3.3 *Ordering and directing Respondent to consult Applicant prior to embarking on the intended redundancies of Applicant's members;*
  - 3.4 *The pre-retrenchment consultations thus far are set-aside.*
4. *That prayer 3.1 operates with immediate and interim effect pending finalization of the matter.*
5. *Costs of suit to be awarded against the Respondent in the event of opposition of the application.*
6. *Granting Applicants further and/or alternative relief."*

[2] When the matter first came before us in May 2020 it became clear that this was a matter that involved factions of the Applicant and the Amalgamated Trade Union of Swaziland and that it could not proceed without the other faction and/or members thereof being cited and

served with the pleadings because allegations were being made against them whereas they were not a party to the litigation.

[3] The applicant then served the second to the twelfth who, in turn filed their intention to oppose and raised certain points of law. The matter returned to Court on 3<sup>rd</sup> August 2020 when the respondent served additional points of law attacking the authority of the applicants representative, Alex Fakudze Labour Law Consultants to continue pursuing the application in this matter. The matter was postponed to the 13 August 2020 for argument.

[3] On this day the second to twelfth respondents' representative submitted on two issues that of *locus standi* and on punitive cost-

[4] **Locus standi**

The second to twelfth respondents submitted that the deponent to the applicant's Founding Affidavit describes herself as the acting secretary general of the applicant. They deny that she holds any such position and aver that it is common cause that she is a member of a faction fighting for the control of the applicant. It was their submission that there was infighting in the applicant and that the union leadership is

divided into two warring factions. Citing the case of **The Council of the Itireleng Village Community and Another v Felix Madi and Twenty Others Supreme Court of Namibia Case No. SA 21/2016**, the respondents submitted that *'where an organization is a juristic body, one faction of that body or association cannot claim to possess locus standi to litigate on behalf of the body.'*

In view of the principle enunciated above it was submitted, Rosemary Hadebe did not have the *locus standi* to litigate in the applicant's name. The second to twelfth respondents therefore prayed that the court finds that the deponent had no *locus standi* and that the application be dismissed. Apart from the notices to raise points of law the second to twelfth respondents did not plead over on the merits of the application.

[5] The applicant's position was that it was a legal entity registered in terms of the law, with the power to sue and be sued and therefore had the locus standi to bring the application to court. It was submitted that the power struggle between the two factions of the applicant had been resolved; that the Commissioner of Labour had intervened in the infighting and had made a ruling which had not been challenged and that, therefore the deponent to the applicant's founding affidavit was the

correct party to depose thereto being the correct party in the executive of the applicant.

[6] The Court takes judicial notice of the leadership dispute within the applicant. There are a number of applications before this court between the two factions with both claiming to be the rightful executive of the applicant. In our view it cannot be denied that there is currently a power struggle within the applicant, which remains unresolved. This is detrimental to both employees and employers such as the first respondent herein. The employees cannot be properly represented where there are leadership disputes and employers are left paralysed by the infighting and are never sure if they are consulting with the correct party.

[7] As indicated above, the second to twelfth applicants did not file any affidavits in response to the application. Further, although they had raised other points of law, they chose only to argue the point of *locus standi* based on the principle that a faction of a juristic body or association can not claim to possess locus standi to litigate on behalf of the body or association. This principle, it was argued was enunciated in the Namibian Supreme Court in the matter between **The**

**Council of the Intireleng Village Community and Another v Felix Madi and Twenty Seven Others (supra).**

[8] Our reading of the cited case does not reveal any such principle. On the facts of that case, it is correct that there were factional disputes between the parties relating to the control of the Itireleng Village Community (a voluntary association) and that the Council for the Itireleng Village Community had brought an application on behalf of the voluntary association. The Council's locus standi to bring the application in its name was successfully challenged on the basis that the voluntary association was a *universitas* with legal personality distinct from its members and with power to sue and be sued in its own name. It was held that the Council, being a constituent organ of the association, had no standing to act on behalf of the association; that proceedings would have to be brought by the association itself.

[9] In *casu*, the applicant has itself brought the application to court. The deponent has set out the authority under which she brings the application. The respondents have not denied that assertion under oath. In the circumstances we accept that the applicant is properly before court and that it is the applicant litigating with Rosemary

Hadebe acting under the authority of the applicant's constitution to bring this application on its behalf in its name. The applicant is a registered organization in terms of the **Industrial Relations Act 2000** (as amended). In terms of **section 28** thereof a registered organization is a body corporate. Consequently it has a legal personality distinct from its members and has the power to sue and be sued in its own name. In terms of **clause 17.2** of its constitution, the applicant's secretary general has the power to institute legal action on behalf of the applicant. The point *in limine* must therefore fail.

[10] We wish to point out that our decision is with respect to this particular matter and must not be seen to endorse the Rosemary Hadebe faction of the applicant as the rightful National Executive Committee (NEC) of the applicant. The answer to that question as to who is the rightful NEC is before the court in another matter between the parties and it would be improper for us to make such declaration via the back door.

[11] In the circumstances we direct that the matter be argued on the merits.

**We make no order as to costs.**

The Members agree.





**S. NSIBANDE**

**PRESIDENT OF THE INDUSTRIAL COURT**

**For the Applicant:** Mr. Alex Fakudze  
(Alex Fakudze Labour Law Consultants)

**For 1<sup>st</sup> Respondent:** Mr. D.N. Jele  
(Robinson Bertram Attorneys)

**2<sup>nd</sup> to 12<sup>th</sup> Respondents:** Mr. S.M. Simelane (SM Simelane & Co)