



**IN THE INDUSTRIAL COURT OF ESWATINI**

Case No. 89/20

In the matter between:

**JIMMY NGWENYA** Applicant

**And**

**ESWATINI WIRE INDUSTRIES** 1<sup>st</sup> Respondent

**COMMISSIONER OF LABOUR** 2<sup>nd</sup> Respondent

**ATTORNEY GENERAL** 3<sup>rd</sup> Respondent

**Neutral citation:** Jimmy Ngwenya v Eswatini Wire and 2 Others [2020] (89/2020)

SZIC 82 (03 July 2020)

**Coram:** MANZINI AJ

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

**Heard:** 19 June 2020

**Delivered:** 03 July 2020

**Summary:** *The Applicant instituted an urgent application, seeking to interdict the Respondent from effecting a scheduled retirement of the Applicant pending a medical report.*

**Held:** *Points in limine upheld. The requirements of a final interdict not met by the Applicant.*

### **RULING**

[1] The Applicant is Jimmy Ngwenya, an adult Swazi male of the Manzini Region, instituted the present proceedings on a certificate of urgency for an order in the following terms:-

- “1. Dispensing with the normal forms of service and time limits provided by the Rules of this Honourable Court and hearing this matter urgently in terms of Rule 15 of the Rules of this Court;*
- 2. Interdicting and restraining the 1<sup>st</sup> Respondent from the scheduled retirements of the Applicant pending a medical report;*
- 3. Granting the Applicant any further and/or alternative relief;*
- 4. Costs of this application.”*

- [2] The 1<sup>st</sup> Respondent is Eswatini Wire Industries, a company duly registered in terms of the Companies Act of Eswatini. Its principal place of business is at the Matsapha Industrial Site.
- [3] The 2<sup>nd</sup> Respondent is the Commissioner of Labour whose office is situated at the InterMinisterial Building, Link Road, Mbabane.
- [4] The 3<sup>rd</sup> Respondent is the Attorney-General, being the ex officio legal representative of Government, whose offices are situated on the fourth floor, Justice Building Mhlambanyatsi Road, Mbabane.
- [5] On the 30<sup>th</sup> of March, 2020, this Honourable Court issued a *Rule Nisi*, or interim order granting the Applicant prayers 1 and 2. The same order went further to order the Respondents to show cause why the orders as granted should not be confirmed. The order was made returnable on Monday the 6<sup>th</sup> of April, 2020.
- [6] The Applicant's application was eventually opposed by the 1<sup>st</sup> Respondent, and it was noted in the *Rule Nisi* that there was no appearance for the Respondents when this order was made. The Notice of Intention to oppose was filed on the 3<sup>rd</sup> of April, 2020. The 1<sup>st</sup> Respondent, in an affidavit duly deposed to by Mr

Stephen Dlamini, who stated that he is the Human Resources Manager of the 1<sup>st</sup> Respondent. The Applicant thereafter filed a Replying Affidavit.

[7] In the Answering Affidavit the 1<sup>st</sup> Respondent raised points of law. The Court is therefore presently called upon to make a ruling on the points of law raised by the 1<sup>st</sup> Respondent.

[8] The 1<sup>st</sup> Respondent raised the following points of law:

8.1 The application before the Court is academic as Applicant has already been paid his terminal benefits and has stopped working.

8.2 The Applicant has failed to meet the requirements of an interdict.

To this end the Attorney for the 1<sup>st</sup> Respondent prayed that the Court dismiss the application with costs.

[9] The Applicant filed a Replying Affidavit, a book of pleadings was duly filed. The matter was argued before Court on the 19<sup>th</sup> of June, 2020. The Court will address the points of law as follows:-

9.1 That the application before Court is academic as Applicant has already been paid his terminal benefits and has stopped working. It was argued by the 1<sup>st</sup> Respondent's attorney that the Applicant was officially retired on or about

the 4<sup>th</sup> of May, 2020. It was argued that the prayers sought had been overtaken by events, and can no longer be prevented by the relief that the Applicant purportedly seeks before this Honourable Court. If the said prayers, if confirmed by this Court, pursuant to the *Rule Nisi*, would not be possible of being effected and/or enforced because the retirement sought to be averted or prevented was in fact done. To this end the Applicant's representative stated that this Court should not be hindered by this from issuing a final interdict in this regard. It was argued on behalf of the Applicant that there was no opposition to the retirement is and of itself, however, the Applicant is desirous of this being done after a medical report, certifying his disability was produced.

9.1.1 Indeed the Applicant's representative argued that 1<sup>st</sup> Respondent had come to Court with dirty hands because it proceeded to effect the retirement notwithstanding the existence of the *Rule Nisi*, an order which they were served with. It was the contention of the Applicant's representative that the Applicant became aware of monies deposited into his bank account by the Employer, and went as far as to enquire what these funds were for. Accordingly to the Applicant's representative, the employer informed the Applicant that he was officially retired, and the sums deposited in his bank account were his terminal benefits.

9.2 That the Applicant's application does not meet the requirements of an interdict. The Applicant's representative made no bones about conceding to this point. It was conceded by the Applicant in his Replying Affidavit (on page 36 of the Book of Pleadings), that indeed these requirements were not met. The Applicant however pointed out that it had already been granted interim relief in the form of the *Rule Nisi*. The Applicant's representative admitted that this party had the option of instituting contempt of Court proceedings against the 1<sup>st</sup> Respondent after the retirement was effected in spite of the Rule Nisi, but opted not to do so as it was more interested in forestalling the retirement, which was illegally effected. It was argued that the option of going to CMAC to institute unfair dismissal was also not taken because, this party is more interested in getting an interdict to prevent this illegal retirement from being effected.

## [10] THE FINDING OF THE COURT

10.1 **That the application is academic because the Applicant has already stopped working, and has been paid his terminal benefits:** It is trite that the entire purpose of the remedy of an interdict is to maintain a certain *status quo*. In essence, it seeks to "freeze" the position until the Court decides where that right lies (see **Prest C.B. (1996), "The Law and Practice of Interdicts pages 2 to 3)**. Indeed it is to be

understood that this remedy seeks to prohibit a *prima facie* illegitimate activity. The harm that the Applicant seeks to forestall in *casu* has already occurred. The Applicant was officially retired, and paid his terminal benefits. Seeking to confirm the *Rule Nisi* previously issued herein would simply grant the Applicant a very hollow determination, which has in actual fact already been overtaken by events. This point of law is accordingly upheld.

#### 10.2 **That the requirements of an interdict have not been met:**

The judgement of **Innes J.A. in Setlogela v Setlogelo 1914 AD 221** provides clarity regarding

the three requirements of a final interdict, and these stand as follows:-

- (i) Clear right
- (ii) An act of interference
- (iii) No other remedy.

Unlike an interim interdict, a final interdict is granted for the purpose of effecting a permanent cessation of an unlawful course of action, or state of affairs (**See Apleni v Minister of Law and Order and Others 1989(1) SA 195 (A).**) The position of the law is that for the grant of such an order, all these three requirements must be present (**See Sanachem (Pty) Ltd v Farmers Agri-Care (Pty) Ltd and Others 1995 (2) SA 781 (A) at 788 -790 (c).**)

10.2.1 According to the **Learned Author, Prest CB** (Supra), the injury that the remedy is sought to curb with must be a continuing one, because the Court cannot grant an interdict restraining an act already committed (page 44). The Applicant in *casu* has the option of approaching CMAC to report an unfair termination of his employment contract. The core of the remedy sought herein is that it is a drastic remedy, and it is one that is used as a last resort (**See SMAWU and 3 Others v Swaziland Poultry Processors (Pty) Ltd, IC Case No. 487/12 para 5.3**). This point of law is also upheld.

[11] The 1<sup>st</sup> Respondent prayed that the application be dismissed with costs. The Court will not grant the order of costs because the 1<sup>st</sup> Respondent proceeded to effect the retirement of the Applicant herein in spite of a *Rule Nisi* interdicting it from doing so pending a medical report. This Honourable Court cannot countenance this blatant disregard of an order made by this very Court.

[12] Taking into account all the factors and circumstances of this case, the Court makes the following order:

- (a) The application is dismissed.
- (b) There is no order as to costs.



The Members agree.

**K. MANZINI**

**ACTING JUDGE OF THE INDUSTRIAL COURT**

**For the Applicant:** Mr M. Dlamini (Labour Law Consultant)

**For the Respondents:** Mr S. Maseko (S.M. Attorneys)