IN THE INDUSTRIAL COURT OF ESWATINI

JUDGMENT

Case No. 119/20

In the matter between:

PATRICK MAMBA	1st Applicant
SOLOMON MLOTSA	2nd Applicant
SICELO ZONDO	3rd Applicant
ZANDILE ZULU	4th Applicant
MBONGENI DLAMINI	5th Applicant
THEMBI DLAMINI	6th Applicant
JUSTICE DLAMINI	7th Applicant
SANELE MASINA	8th Applicant
USUTHU BRANCH OF SNAT	9th Applicant

And

THE SWAZILAND ASSOCIATION OF TEACHERS (SNAT)	1st Applicant

CHAIRPERSON OF THE DISCIPLINARY

PROCEEDINGS 2nd Respondent

Neutral citation: Patrick Mamba and 8 Others v The Swaziland Association of Teachers (SNAT) and Another [2020] (119/2020) SZIC 86 (10 July 2020)

Coram: **NSIBANDE S. JP**

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

Heard: 19 June 2020

Delivered: 10 July 2020

JUDGMENT

[1] The first to eighth applicants are teachers and are members of the first respondent. They are also members of the Branch Executive of the nineth applicant.

[2] The nineth applicant is a branch of the first respondent duly established in terms of the first respondent's constitution.

[3] The first respondent is the Swaziland National Association of Teachers, a national teacher's union registered as such in accordance with the **Industrial Relations Act 2000** as amended. We shall refer to the first respondent as the SNAT in the course of this judgment.

[4] The second respondent chairman of the disciplinary committee set up by the first respondent, to chair the disciplinary hearing involving the applicants.

[5] In March 2020, and after the exchange of correspondence, the first to nineth applicants were suspended by the first respondent based on accusations of misconduct. Following on the suspensions, the

applicants were invited to a disciplinary hearing on 28th March 2020. They faced various charges of misconduct arising from their alleged failure to carryout the decisions of the Executive Committee as well as various acts of internationally disrupting meetings and normal work operations of the 1st respondent. It is not necessary for purposes of this judgement to list all the charges.

[6] It is the applicants' contention that the charges giving rise to the disciplinary hearing originate from a disagreement with regard to the interpretation and implementation of a resolution passed by members of the first respondent at its Binniel Conference in 2016. The resolution seeks to reinstate the conduct of elections at both national and branch level of the first respondent.

[7] As a result of the difference in opinion on the interpretation and application of the resolution, the first respondent refused to recognise the appointment of the first applicant as chairperson of the nineth applicant. Whilst the applicant contend that he is the lawfully elected chairperson.

[8] The applicants have now approached the Court on an urgent basis for an order in the following terms –

"3. Calling upon the Respondent to show cause, if any, on a date and time to be determined by this Honourable Court, why an order should not be made:

3.1. Declaring to be unlawful and setting aside the decision communicated by Circular dated November 26, 2019 in so far as it relates to participation and involvement of members in the organisation's democratic and electoral process in that it is inconsistent with the constitution of the SNAT, the ***Industrial Relations Act 2000*** *as read together with the Constitution of Swaziland 2005.*

3.2. Declaring to be unlawful and setting aside the decision of the Respondent communicated to the ninth Respondent (sic) by letter dated March 27, 2019 to be unlawful and no force and effect on the basis that it is inconsistent with the constitution of the SNAT, the ***Industrial Relations Act 2000*** *as read together with the Constitution of Swaziland 2005;*

3.3 Declaring to be unlawful and setting aside the decision of the Respondent suspending the Applicants from all the activities of the SNAT on the ground that the decision is based on the wrong interpretation and interpretation of resolution number 16 of the SNAT 2016 Biennial Conference;

3.4 Declaring to be unlawful and setting aside the decision to subject the applicants to a disciplinary process on the ground that the decision is based on the wrong interpretation and implementation of the SNAT Conference Resolution and therefore constitutes an unlawful act;

3.5 Staying a stopping the disciplinary proceedings instituted against the first to the eigth respondents pending the finalisation of the matter;

3.6 That the branch subventions that have been retained by the first respondent since June 2019 be released to the Branch (Ninth applicant) bank account forthwith;

3.7 That paragraph 3.5 above operates as an interim order to operate with immediate effect pending the final determination of this matter;

3.8 Cost of suit in the event this application is opposed;

3.9 Further and/or alternative relief as the Honourable Court deems just and equitable.

[9] The application is opposed by the first respondent which filed an opposing affidavit. In its opposing affidavit the first respondent gives notice to strike out in terms of which it seeks to have applicant's annexure **'USB2'** being a legal opinion, struck out on the basis that it is a privileged and confidential document between attorney and client and not for the public domain.

[10] The first respondent further filed a notice to raise points of law. In terms of the notice, the first respondent avers that this Court has no jurisdiction to hear the matter by virtue of the provisions of **Section 14 of the Constitution and by laws** of first respondent, SNAT which has exclusive jurisdiction over such matters; that the applicants have not in

terms of the aforesaid **Section 14**, exhausted the domestic remedies which are mandatory nor have they pleaded that it is impossible or unnecessary to do so; that the aforesaid provisions compel the applicants to appear before the Board of Trustees as provided for in terms of clause 14, to deliberate the aforesaid cause of complaint before the Court, whereupon the Board of Trustees shall render its decision.

[11] The first respondent refers to Section 14 of its constitution its papers whereas the Constitution speaks of articles so Article 14 is headed **BOARD OF TRUSTEES** and 14.2 sets out the duties of the board. The relevant article referred to by the first respondent is 14.2.2 which reads:

"The Board shall:

14.2.2 Mediate or take such constitutional steps as to attend to matters of misunderstanding conflicts at national level. It shall make recommendations for consideration by National Conference…

[12] In argument the respondent submitted that the first respondent constitution is mandatory. The applicants, according to first respondent must bring this misunderstanding and/or conflict to the BOARD for mediation before it can be brought to the Court. First respondent further submitted that the applicants have not shown that

they have been prevented from appearing before the Board or that there has been some difficulty created by either first respondent or the Board itself that has prevented them from planning the matter before the Board of Trustees and that in the absence of such, the matter must be heard by the Board before it is brought to Court.

[13] The applicants submitted firstly that the misunderstanding between the applicant and the first respondent is not one that can be classified as one at national level that this is a dispute between a branch and the executive which cannot be said to be a dispute at national level.

[14] Secondly they submitted that if it is assumed that article 14 provides an internal remedy, such internal remedy does not and cannot unduly oust the jurisdiction of the Court. The applicants cited the case of the **Chairman of the Liquor Board v Mndzebele Civil Appeal No. 01/13**. The proper citation of the case cited is **Chairman of the Liquor Licensing Board v Joshua B. Mkhonta (01/2013) [2013] SZSC 42 13 May 2013**.

[15] Thirdly the applicants averred that the matter was considered by the first respondent's general Council which recommended that the dispute over

the 2016 resolution be referred to a legal expert for interpretation; that it cannot be that while one structure of the first respondent has dealt with the matter as it deems fit again the same issue is referred to another internal structure; that effectively the internal remedies are neither effective not sufficient and will only prolong the resolution of the dispute; that internal remedies must be available, effective and not unduly delay the resolution of the matter failing which a Court will condone a failure to pursue same if the remedy is illusory or inadequate. It was submitted that the internal remedies in this matter were not available, if they are they are illusory and will duly prolong the resolution of the matter.

[16] The dispute between the parties involves a resolution taken at a national conference in 2016 which seeks to regulate national and branch elections of the SNAT with regard to candidates for elections as well as election procedures, at both national and branch levels.

[17] Article 14 of the SNAT constitution does not define the conflicts at national level that is mandates the Board of Trustees to mediate in. We are therefore left to own our devices in deciding whether the current conflict between the applicants and the first respondent is one that the Board of Trustees should meditate in. It seems to us that the dispute in

a conflict at national level. This is so not only because the resolution affects the first respondent's national elections and candidates thereto, it was taken at a National conference. Secondly it affects all the branches of the first respondent who make up the first respondent. We come to the conclusion that the dispute between the parties constitutes a conflict at the national level and requires mediation by the Board of Trustees.

[18] We are also of the view that clause 14 of the first respondent's constitution provides internal remedies for its members. The applicants complain that despite the legal opinion sought and obtained by first respondent the resolution of 2018 is being interpreted and applied wrongly. That as a result they have not only been called to a disciplinary hearing but the branch they run has been excluded from the activities of the first respondent to the extent that subventions due to the branch have not been paid to it since June 2019. This dispute has not been raised before any other internal structure of the first respondent. While an opinion on the interpretation it appears that the opinion has not had the desired effect. It appears to us that this matter ought to be referred to the Board of Trustees. In our view doing so does not define the applicants of their rights to access the Courts in **Terms of the Constitution of Swaziland Act**. The applicants right to access Court is not being

decided, it is being delayed should the Board of Trustees be unable to give applicants any joy they may well approach the Court for relief. This matter is distinguishable from that of the case cited by applicants Chairman of Liquor Board (supra) in that the Board had made a decision and the chairman thereof was taken by that applicant to have treated her unfairly (in fact it was said the chair had been activated by bad faith at the hearing). *In casu* the Board of Trustees have made in decision in fact they have not been approached. There is nothing before us that indicates that the Board of Trustees and the process of medication is a chairman is unavailable. On the Contrary **Section 4(i) of the Industrial Relations Act 2000 as amended** states that part of the purpose and objective of the Act is to –

'(i) stimulate a self regulatory system of industrial and labout relations and self governance'

In our view it is in the interests of organisations such as the first respondent to self-correct on issues that arise within the membership. As the applicants themselves state at paragraph 5.1 of the founding affidavit this is a matter that ought to have been resolved without resorting to the intervention of the Court.

[19] In the premises we come to the considered conclusion that the applicants ought to exhaust the SNAT's internal remedies. We are alive to the fact that they face disciplinary action which first respondent indicted it would wish to proceed with. We are of the view that it would be unfair for applicants to start the process of involving the Board of Trustees with the disciplinary hearing hanging over their heards. We therefore make the following order:

(**a) The application is postponed *sine die*;**

(b) The applicants are directed to approach first respondent's Board of Trustees with regard to having this dispute attended to within seven court days of this order;

(c) The disciplinary hearings involving the applicants are stayed pending the decision of the Board of Trustees;

(d) Each party may approach the Court in 5 days notice to the other should there be inordinate delays in having the matter finalised by the Board of Trustees;

(e) There is no order as to costs at this stage.

The members agree.

S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For the Applicants: Mr T.R. Maseko (T.R. Maseko Attorneys)

For the Respondents: Mr L. Howe (Howe Masuku Nsibande Attorneys)