



**IN THE INDUSTRIAL COURT OF ESWATINI**

Case No. 119/2020

In the matter between:

**PATRICK MAMBA AND 8 OTHERS**

Applicants

And

**THE SWAZILAND ASSOCIATION  
OF TEACHERS (SNAT)**

1<sup>st</sup> Respondent

**CHAIRPERSON OF THE DISCIPLINARY  
PROCEEDINGS**

2<sup>nd</sup> Respondent

**Neutral citation:** Patrick Mamba and 8 Others v The Swaziland Association of Teachers (SNAT) And Another (119/2020) [2021] SZIC 35 (05 May 2021)

**Coram:** **S. NSIBANDE J.P.**

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

**Date** 11 December 2020

**Heard:** 05 May 2021

**Delivered:**

## JUDGMENT

[1] The Applicants are members of the first respondent (SNAT) under the Usuthu Branch (the ninth applicant) of the first respondent. They seek an order in the following terms:-

*1.1 Declaring to be unlawful and setting aside the decision of the Board of Trustees dated November 2, 2020 in as much as it is inconsistent with the Article 23 of the Constitution of the SNAT.*

*1.2 Declaring to be unlawful and setting aside decision mentioned in paragraph 1 above in as much as it is an improper interpretation and inconsistent with the Conference resolution 16 of 2016 as read with the Constitution of the SNAT.*

*1.3 Declaring to be unlawful and setting aside the said decision in as much as it is inconsistent with the Constitution of the SNAT as read with Section 98 of the Industrial Relations Act (the Act) and with the Constitution of Swaziland, 2005 [the Constitution].*

The application is opposed by the respondents.

[2] Applicants initially brought an application against the respondents, under a certificate of urgency in May 2020. In that application

applicants sought to review and set aside a circular dated 26<sup>th</sup> November 2019 in so far as it related to participation 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 amended** as read together with the Constitution; setting aside the decision of the respondent communicated to the ninth respondent by letter dated March 27, 2019 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; setting aside the decision of the Respondent suspending the applicants from all activities of the SNAT on the ground that the decision is based on the wrong interpretation and implementation of resolution Number 16 of the SNAT Biennial Conference; 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 therefore constitutes an unlawful act; staying and stopping the disciplinary proceedings instituted against the first to eighth respondents pending finalisation of the matter; directing that the subventions that have been retained by the first

respondent since June 2019 be released to the Branch [Ninth Applicant] bank account forthwith.

- [3] Having heard the parties the Court postponed the matter *sine die* and directed that the applicants exhaust internal remedies as provided by the SNAT's Constitution. In this regard the applicants were directed to approach the Board of Trustees with their grievance, in terms of the relevant article of the SNAT constitution.
- [4] When the matter came before us the applicants sought to strike out paragraph 5 of the respondent's Answering affidavit on the basis that it was scandalous and vexatious. The respondents conceded that the paragraph may be construed as scandalous, indicated that it was not their intention to scandalise neither the applicants nor the Court and consequently withdrew the offending paragraph.
- [5] The genesis of the dispute between the parties is the interpretation of **Conference Resolution 16 of 2016**. The applicants have a different interpretation of the Resolution while the respondents have their own interpretation of it. The difference in opinion led to the first applicant being disqualified by the first respondent from his position as a duly

elected chairperson of the ninth applicant (the Usuthu Branch), to disciplinary action being instituted against the first to eighth applicants and to the withholding of the branch subventions that should have paid to the ninth applicant.

[6] The applicants are dissatisfied with the recommendation made by the Board of Trustees (hereinafter called the BOT), that the Usuthu Branch of SNAT (Ninth applicant) should hold a bi-election for the chairperson's position, respecting the spirit of the resolution within 14 days. They submitted that the BOT could not have exercised its discretion judiciously in coming to the recommendation that it did. In its founding affidavit the applicants state that they were not given a fair opportunity to present their case as the BOT had prejudged the matter and already taken a decision on the matter without having heard the applicants. It is alleged that the Chairperson of the Board put it to the applicants that the ninth applicant was defying **Conference Resolution 16 of 2016**.

[7] It was the applicants' further contention that the BOT informed them that they had a letter or opinion from the Credentials Committee that informed them that **Resolution 16 of 2016** barred the first applicant

from standing for elections at the Branch level because he had earlier stood for election for the presidency of the SNAT. It was the submission of the applicants that the BOT did not apply itself to the question before it but had acted arbitrarily, irrationally and unreasonably thus its decision stood to be set aside.

- [8] The applicants' further complaint is that the BOT did not have regard for **Article 23** of the SNAT constitution which lays out the requirements for qualification or disqualification from election into office; that while it acknowledged that **Conference Resolution 16 of 2016** conflicts with **Article 23** of the SNAT constitution, the BOT recommended that the ninth applicant convenes a by-election; and that such recommendation is beyond the powers of the BOT as set out in **Article 14** of the constitution. In a nutshell the applicants case is that if **Conference Resolution 16 of 2016** is in conflict with the constitution then it is unreasonable and unlawful for the BOT to recommend a by-election instead of recommending that the resolution be revisited to bring it into line with the constitution. In argument Mr. Maseko for the applicants pointed out that the constitution could not be mended through a resolution but through the relevant articles of the first respondent's constitution.

[9] The respondents' argument was in the apposite. While agreeing that an organisation could not lawfully ignore or violate its own constitution, the respondents submitted that **Conference Resolution 16 of 2016** was properly raised and passed at conference and therefore stands and cannot be circumvented by the applicants in any way; that the resolution can have the effect of amending the constitution because it was approved by a majority at **the National General Conference in terms of Article 32.1 of the constitution**; that the BOT's decision that the ninth respondent should hold to bi-elections effectively means that the resolution is constitutional; and finally that, with the BOT having acted within its powers it was not open to the applicants to query its decision without setting out how it was irrational particularly since the applicants have not been excluded from participating in the contestation for leadership positions within the first respondent - all members, not just the applicants, were merely being limited to either a contestation for a national position or one for a branch position.

[10] The question before us is whether the **Conference Resolution 16 of 2016** goes against the constitution of the first respondent or not. If it does then that is the end of the matter and the first respondent

have to either revisit the resolution or amend its constitution in order to achieve the objective sought by the resolution. It appears to be common cause that the intention of the resolution was to have candidates who wished to contest for leadership position decide whether to contest at National or Branch level and not have candidates who had failed at National Level contest Branch level elections.

[11] **Conference Resolution 16 of 2016** reads as follows;

*"16. **Type of motion.** Organizational*

***Noting That:** it is time wasting to have the branch elective conference and it also makes people who have failed national elections to think the branch is where one can make a stopover.*

***Believing that:** branch should be decisive on whether they want to serve at national or branch level.*

*Therefore recommended that: branch elections should be the same day of the branch conference.*

***MOVER:** Manzini region. **Secunder:** Hhohho, Lubombo Motion in order."*



[12] **Article 23** of the first respondent's constitution regulates the election process within the organisation. **Article 23.1.1** states that - *"Any fully paid up member shall be eligible for nomination at various levels of the organisational structure. She/he should have been an active member for at least five (5) years."*

The applicants' contention is that this article entitles the first applicant to the position of branch chairperson as nominated and elected by members of the ninth applicant and that the disqualification as per the first respondent's version is therefore not only unconstitutional by going against **Article 23** but also goes against **Article 7** which states that the organisation will be guided by the ideals of democracy, human rights and social justice.

[13] Our reading of the pertinent articles of the constitution of the first respondent and **Conference Resolution 16 of 2016** lead us to the conclusion that the resolution goes against **Article 23 of the SNAT Constitution**. The first respondent argued that the resolution sought to amend the constitution by introducing a limitation on member's rights in terms of **Article 32 of the SNAT Constitution**. We find that a holistic reading of the **Article 32** that deals with the amendment of the constitution, does not support this view. Clearly there was no

amendment submitted to the organisation within the time stipulated in the constitution nor was the intention to amend the Constitution placed on the agenda. On the facts of this matter it cannot be denied that there was a resolution presented and passed in terms of **Article 19.1.1.1**. However, in our view there cannot be a backdoor amendment of the constitution through this resolution. All amendments must go through the process set out in **Article 32 of the SNAT Constitution**.

[14] The constitution of an organisation such as the first respondent is legally binding and effect must be given to its ordinary language. We are in agreement with Victor AJ in **National Union Of Metal Workers of South Africa v Lufil Packaging (Isithebe) and two others Case CCT 172119 [2020] ZACC 7** where he states that *"when members have formally adopted a constitution it becomes legally binding on them ... to allow unions to operate outside their constitutions, at their discretion would go against core constitutional values such as accountability, transparency and openness."*

[15] In conclusion we find that the eligibility of members to contest elections within the first respondent is defined by its own constitution

**(see Article 23).** When the first respondent sought to limit the eligibility of members to stand for elections at national and branch level within the same election process, in its interpretation of **Conference Resolution 16 of 2016** it went against the provisions of **Article 23** of its Constitution. In our view, it cannot do so through a resolution but must abide by the articles that regulate amendments in its constitution. The constitution ought to be amended to give effect to the resolution. In the premises we find that the application must succeed.

[16] As an observation by the Court, we state that the resolution as it stands cannot be interpreted as limiting members rights to stand for elections to either national or branch as interpreted by the parties. It does not read that way and the interpretation given probably arises from background knowledge the parties have of the mischief the resolution sought to correct. On a proper reading, the resolution simply resolves to have Branch elections held on the same day as branch conference. That takes the issue of members using the branch as a place to make a stop over, nowhere.

[17] On the issue of costs, the parties agreed that the first respondent would pay the costs of the application. We therefore make the following order: -

1. **The decision of the Board of Trustees dated November 2, 2020 is hereby declared unlawful and set aside accordingly.**
2. **The first respondent is to pay the costs of the application.**

The Members Agree.

**S. NSIBANDE**

**PRESIDENT OF THE INDUSTRIAL COURT OF ESWATINI**

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

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