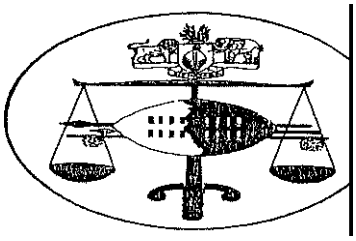

IN THE INDUSTRIAL COURT OF SWAZILAND

JUDGEMENT

CASE NO. 197/2021

In the matter

between:- SABELO DLAMINI AND. APPLICANT

ESWATINI CIVIL AVIATION AUTHORITY 1ST RESPONDENT

MUZI MOTSA N.O. 2ND RESPONDENT

Neutral citation *Sabelo Dlamini v Eswatini Civil Aviation Authority and Another SZIC 74 (28 September 2021)*

CORAM DLAMINIJ,
(Sitting with A. Ntiwane & S.P. Mamba Nominated Members of the Court)

Heard 29 JULY2021

Delivered 28 SEPTEMBER 2021

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1. This matter came before this Court accompanied by a certificate of urgency and the Applicant seeks orders as follows:

- ***That the Applicant is [he] condoned for his 11011-compliance with the forms, time limits, manner of service and [that] the matter is [he] enrolled lo he heard as one*** *of* ***urgency.***
- ***A rule nisi is [he} issued ca/fi11g upon the Responde11ts to show cause 011 a date to he fixed*** *by* ***the above ho11ourahle Court why a11 order*** **i11** ***the following terms should not*** *be* ***made final:***
  - ***» The First Respondent's letter of dismissal to the Applicant dated the 16th day of June 2021 is hereby set aside;***
  - ***» The Second Respondent's decision to hand down a verdict on the Applicant's*** *case,* ***in the absence of the Applicant and without reasons, only promising the parties to hand dow11 same in JO*** *weeks,* ***is hereby reviewed and/or set aside;***
  - ***» The Seco11d Respondent is ordered and/or directed to provide a complete record of the proceedings of the hearing and a judgement spelling out full reasons for !tis verdict first before calling the parties to address him on aggravating and mitigating factors;***
  - ***» The First Respondent is ordered to pay tlte costs of this application 011 an attorney and own client scale.***
- ***Pending the finalization*** *of* ***the matter*** **i11** ***due course, the disciplinary hearing of the Applicant is hereby stayed;***
- ***Gra11ting the Applicantfurtlter and/or alternative relief.***

2. In his founding affidavit, the Applicant, Sabelo Dlamini, states that he is an employee of the Respondent, employed as Director of Marketing, and that he is cunently facing ari internal disciplinary

hearing. He states as well that the First Respondent, Eswatini Civil Aviation Authority (ECAA) has unlawfully dismissed him in circumstances where he had to first address the Second Respondent (Muzi Motsa NO) in his capacity as the Chairperson of his disciplinary enquiry, on mitigation of the sanction he had meted on him before the decision to dismiss him could be arrived at. The Applicant further states in his affidavit that, through his lawyers, he made the 1st Respondent aware that its conduct was illegal and requested it to withdraw the letter of dismissal but it did not, hence his decision to now approach this Court on an urgent basis.

3. The Applicant fu1iher informs the Court that at his disciplinary hearing he was facing four misconduct charges and that out of this four he has been found guilty only in respect of one count. The charges he was facing were;

- ***1. <u>Sexual Harassment</u> - it being alleged that between the period of Novembe1· 2017 and 2018, he committed acts of sexual harassment by subjecting Ms. Nonjabuliso Tsabedze, (an employee of ESTf'ACAA) to unwelcome sexual advances, passing comments of a sexual nature and continuing to do so despite being informed that his advances were unwelcome, thereby breaching Clause 16.1.3 (x) of ESWACAA 's terms and conditions of Employment.***

- *2. <u>Sexual Jiarassment</u> - it being alleged that between tlte period of April 2017 and June ·2017, !te committed acts of sexual harassment by subjecting his subordinate, Ms. Phindile J',fakube, also a ESWACAA employee, to unwelcome sexual advances, passing comments of a sexual nature and continuing to do so despite being informed that his advances were not welcome, thereby breaching Clause 16.1.1 (x) of ESWACAA's terms and conditions of employment.*

- *3. <u>Bringing the name o(ESWACAA into disrepute-</u> it being alleged that as a direct result of !tis conduct of sexually harassing the 2 female employees, the print media (eSwatini Observe, published stories relating to the alleged acts of sexual harassment and that the name of ESWACAA was expressly mentioned in those publications thus tamishing the good name and reputation of ESWACAA.*

- ***4. <u>Gross Misconduct</u> - it being alleged that on the 1(/11 Janua,y 2019, whilst he was 011 suspension, he called Nonjabuliso Tsabedze's husband named Bruce Ginindza and requested to meet him to talk about what he termed a personal matter. On the JJI" January 2019, he drove to Mahlanya and met Mr. Bruce Ginindza, in that meeting he expressly stated I/tat he must talk to and persuade Nonjabuliso ·to withdraw her sexual harassment complaint that she lodged against him in the workplace and that he was prepared to pay Nonjabu/iso Tsabedze money as compensation. He was therefore said to have directly and intentionally contravened the express terms and conditions of his suspension and is said to have attempted to ilifluence the employer's witnesses not to testify against him.***

4. The Applicant says after returning the guilty verdict the Chairperson of his hearing advised him that he would take atleast two and a half

months to hand down his reasons on the factual findings, yet he now wants to call the parties to address him on mitigating and aggravating factors.

5. In his affidavit, the Applicant also informs the Court that the reason he has approached the Court on an urgent basis is because his Employer has now issued what he feels is an invalid letter of dismissal in circumstances where he is yet to first address the Chairperson of his hearing in mitigation, before it (Employer) can take a decision on whether he should be dismissed or not. He feels if he were to adhere to the usual forms, time limits and the usual manner of service, as spelt out in the Industrial Relations Act, it would take more than a month for his matter to be heard, and that therefore any order he would get would hence be academic.

6. The Applicant further informs the Court that his charge sheet was drafted in line with the Disciplinary Code of the Aviation Authority, as such he says he expected the hearing against him should be in line with the same Code. Dlamini fu1iher complains that the Respondents

are in breach of the disciplinary code in that they have subjected him to a long and unprecedented disciplinary hearing for the past 3 years.

7. Dlamini further contends that the disciplinary code provides that if an employee is found guilty, he/she shall be given an opportunity to present evidence in mitigation to the Chairperson of the hearing after which an appropriate disciplinary sanction will be taken. The disciplinary code, according to the Applicant, merely reiterates his basic procedural right to mitigate before· a sanction of dismissal is meted out on him.

8. Another right accorded to him by the disciplinary code, according to the Applicant, is that the Chairperson has to make his decision, on evidence led, with full reasons. This he says is to enable employees to appeal decisions made against them at the conclusion of their hearings. He says in terms of Clause 6.1(k) of the Code, after a sanction has been meted out, and after he has appealed, an appeal hearing must be convened within 5 working days or that a decision be taken within the same period. The short periods within which to file an appeal and for the appeal itself to be heard are solely meant to

protect interests of employees and also ensure that appeal hearings are finalized within a reasonable time, In his case though, the Applicant feels that he has been denied the right to appeal with the stipulated 5 days.

9. It is the Applicant's fu1iher contention that in tenns of the Code the Employer can only take a disciplinary sanction after aggravating and mitigating factors have been made by the parties and that the Chairperson of the hearing has taken them into consideration before making a recommendation on the appropriate sanction to be meted out.

10. In his disciplinary hearing, the Applicant informs the Court that at the time when he was expecting that the Chairperson would prepare his factual findings on his disciplinary hearing, nothing happened until 10 June 2021, when his Attorney received a call from the Chairperson of the hearing advising that he was being pressured by the Employer to deliver his decision on the matter. Compounding issues fu1iher for the Chairperson was that his laptop computer had apparently 'crashed' and all infonnation pertaining to the hearing of the Applicant deleted.

The Chairperson then proposed that the parties allow him to deliver an *ex tempore* decision, and that full reasons for the decision would follow in about 10 weeks.

11. From the emails exchanged between the parties, what can be deduced is that the Applicant and his Attorney were not agreeable to the proposal by the Chairperson. In fact, the Applicant's Attorney wrote to request that the Chairperson should rather appeal to the Employer for patience whilst he prepared a full ruling/verdict in the matter.

12. However, it would seem that the pressure by the Employer took its toll on the Chairperson of the hearing because he called the Applicant and his Attorney for resumption of the hearing on 16 June 2021, at 2pm, to deliver his verdict. This date, according to the Applicant, was imposed by the Chairperson, when all along dates were always agreed upon after consultation with all parties involved. The Applicant's Attorney wrote to the Chahman to advise him that the proposed date was not suitable for him because he would be engaged in other business and that he was failing to get someone else to stand in for him. The Applicant says lie was also not feeling well and went to see

a Doctor who booked him off sick. The Applicant's sick note was forwarded to the Employer. As such according to the Applicant, both he and his Atton1ey were unable to attend the hearing on the 16th June 2021, where the verdict of the Chairperson was delivered.

13. In the evening of the same 16 June the Applicant says he received a call from his residence advising him that there was a gentleman who had come to deliver conespondence from the Employer. He infonned the gentleman to come back the next morning. Then at approximately 7:40pm, the Applicant says he received an email from the Human Resources Director, John Nsibande, to which was attached a letter terminating his services. This letter was signed by the Director General of the 1st Respondent, Ms. Andile Mtetwa. The Applicant further states that the termination of his services was based on the *ex tempore* verdict of the Chairperson of his Disciplinary hearing. He says despite his protestation and the spirited representations of his Attorney that the proposal to deliver an *ex tempore* verdict was prejudicial and detrimental to him and his rights, the Chairperson went ahead and delivered his verdict without giving full reasons.

14. The Applicant further states that then on 17 June 2021, he received the *ex tempore* verdict of the Chairperson in which he acknowledged that both the Applicant and his Attorney were not at the hearing and further that he would arrange for a date in which all the pa1iies would be present so that he can be addressed both on mitigation and aggravation factors of the hearing. It is for this reason that the Applicant says the 1st Respondent issued an invalid letter of dismissal since he was not heard in mitigation of whatever sanction that was to be meted out on him.

15. It is the Applicant's contention that the letter of dismissal is invalid because he was not afforded an opportunity to present his mitigating factors to the 2nd Respondent in line with the Disciplinary code. He states as well that the pt Respondent did not receive any recommendation as to the sanction from the 2nd Respondent and that therefore any purported letter of dismissal at this stage is invalid and not in line with the disciplinary code.

16. The Applicant fu1iher contends that the Disciplinary Code mandates the 2nd Respondent to issue his decision and that a decision is only

issued at end of the hearing and that such decisions has to have full reasons on how he an-ived at that decision or verdict. Thereafter, it is only then that the paiiies can address **him** on the mitigating (by Employee) and aggravating (by Employer) factors.

17. In answer to the Applicant's founding affidavit, the Respondent, through the Human Capital Director - John Nsibande, was only content with raising points *in limine* without venturing into the merits of the matter because it felt that the matter could be disposed of without doing so.

18. The pt Respondent first raised the issue of urgency, contending that loss of income is a consequence of dismissal and that a dismissal does not give rise to urgency. It fmiher states that issues relating to procedural and substantive fairness cannot be dealt with on motion proceedings.

19. The second point of law the pt Respondent raises relates to the jurisdiction of this Cami to grant the relief sought by the Applicant. In this regard, the 1st Respondent contends that the relief sought cannot

be granted without the prov1s10ns of Part VIII of the Industrial Relations Act being complied with. In effect, the argmnent being advanced on behalf of the Employer here is that since the Applicant has been dismissed, then he has to report a dispute with the Conciliation, Mediation and Arbitration Commission (CMAC) before this Court can hear and determine his dispute.

20. In untangling this present dispute of the present protagonist in this matter, the Court shall first have regard to the Disciplinary Code and Procedure of the 1st Respondent. Under Clause 3 headed ***'PRINCIPLES AND GENERAL RULES'*** it is provided at clause 3.3 that '... ***This Code will not be applied frivolously, nor should employees or managers treat it in a prejudicial and ji-ivolous manner.'***

21. Then under clause 6 headed ***'DISCIPLINARY PROCEDURE'*** it is provided under clause 6.l(d) that '.. ***.If an employee is found guilty, he/she shall be given an opportunity to present evidence in mitigation to the Chairperson at the hearing.'*** Then clause 6.l(e) provides that ***' ... Subsequent to the hearing and upon full***

consideration of the evidence and the employee's defence, as well as the mitigating and aggravating factors, appropriate disciplina,y action will be taken. In essence, the Disciplinary Code affords the Applicant the right to be heard in mitigation before whatever sanction can be meted out.

22. From where I am sitting, the principal and pnme purpose of disciplinary code and procedure is to regulate standards of conduct within a company or organization. The aim of discipline is to cmTect unacceptable behavior and adopt a progressive approach in the workplace. This is meant and in fact should create certainty and consistency in the application of discipline.

23. The disciplinary code has certain obligations for the parties - and in this regard Employers need to ascertain that all Employees are aware of the rules and the reasonable standards of behaviour that are expected of them in the workplace. Employees therefore have to be made aware of what their duties and obligations are in tenns of Disciplinary Code and Procedure as agreed to and/or assented to by both the Employees and their Employer.

24. On the opposite side of the coin though is a parallel obligation for Employers themselves to equally comply with the Disciplinary Code and Procedure. Since the paramount and principal purpose of a Disciplinary Code and Procedure is to regulate standards of conduct with that particular company or organization, it goes without saying that such Disciplinary Code and Procedure document must be adhered to without any derailment by either of the parties

25. Disciplinary Codes and Procedures are necessary to ensure both that discipline is maintained in the workplace by applying disciplinary measures [111] a fair and consistent manner. It is not always easily understood exactly what this term, consistency means exactly. The dictionary does not help the Court much - it merely defines the word 'consistent' as being a 'state of consistency.' A better definition would perhaps be that consistency means ***'treating like with like' or 'applying the same standard to all.'*** (See: **Labour Guide of South Africa)**

26. The term consistency, basically requires that the Employer must be consistent in the application of disciplinary action, and that it

(Employer) must avoid *'inconsistency'*. In other words, and generally speaking, it would be unfair to treat people who have committed similar acts of misconduct differently. It would be unfair to treat employees who have committed similar transgressions by different standards, or measure the seriousness of the act of misconduct by a different standard than the standards and procedures that are agreed on by the Employer and the Employee, through their Union when they appended their signatures thereto.

27. Disputes and grievances that occur in the workplace ought to be handled in accordance with the principles of natural justice and fairness. Apart from considerations of equity and natural justice, the maintenance of a good industrial relations atmosphere in the workplace requires that acceptable fair procedures are in place and observed.

28. Now, in this present matter, in te1ms of the Disciplinary Code and Procedure, specifically Clause 6.l(d), the tequirement is that where an Employee, such as the Applicant, has been found guilty, he ***shall*** be given an oppmiunity to present evidence in mitigation to the

Chairperson at the hearing. The use of the w6rd ***'shall'*** is indicative of an imperative command! The word ***'shall'*** *in casu* means that there is a legal duty imposed on the party so directed to comply and adhere thereto without any deviation whatsoever.

29. In this matter, the Chairperson, in his *ex tempore* ruling/verdict, in adherence to the Disciplinary Code, indicated at the last but one paragraph of his verdict that, since both the Applicant and his Attorney were indisposed on the day he delivered the ruling, '*...the presentation of aggravating and/or mitigating factors, will be deferred to a later date yet to be communicated to the parties through the normal mode of communication.* '

30. The Chairperson was very much aware of his legal obligations, hence his decision to defer the presentation of the mitigating and aggravating factors to a date to be communicated to the parties. As to what then suddenly became so urgent that the 1st Respondent could not wait for that date baffles the Court. I should point out here that from where I am seated, more is expected from an Employer as big and as well resourced as the present first Respondent. It is unacceptable that an

Employer such as the first Respondent would decide to ignore the provisions of its own Disciplinary Code and nonchalantly inform this Court that it has no jurisdiction to hear and detennine this matter because the Applicant can still follow the procedure under Part VIII of our Industrial Relations Act. That is clearly unacceptable and will not be countenanced by this Court. The deviation by the 1st Respondent from its own Disciplinary Code is not just a minor one that this Court can overlook. Certainly, it is not! This deviation goes to the heart of this matter, and cannot and will not be ignored.

31. From the foregoing, it follows and in fact it is the decision of this Court that the Applicant's present application should succeed with the result that the 1st Respondent's point *in limine* without merit and are accordingly dismissed. The Comt accordingly issues orders as follows;

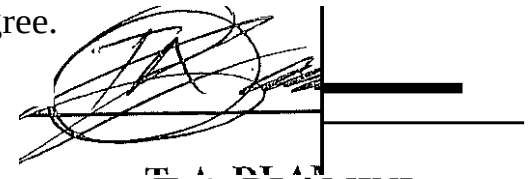
a) The First Respondent's letter of dismissal to the Applicant dated 16th June 2021, be and is hereby set aside.

b) *The Second Respondent's decision to hand down a verdict on the Applicant's case, in the absence of the Applicant and without full reasons be and is hereby reviewed and set aside.*

c) *The Second Respondent is ordered and directed to provide a complete record of the proceedings of the hearing and a judgement spelling out full reasons for his verdict first before calling the parties to address him on aggravating and mitigating factors.*

d) *Under further and/or alternative relief the Applicant is granted costs*

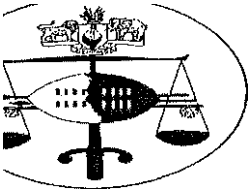
The members agree.



T. A. **DLAMINI**
JUDGE - INDUSTRIAL COURT

DELIVERED IN OPEN COURT ON **THIS** 28th **DAY OF** SEPTEMBER 2021.

For the Applicant : Attorney Mr. D. Je/e (Robinson Bertram Attorneys)
For the Respondent : Attorney Afr. B. Gamedze (Afusa J,;f, Sibandze Attorneys)



IN THE INDUSTRIAL COURT OF ESWATINI

Case No.228/21

In the matter between:

NATIONAL PUBLIC SERVICE AND ALLIED WORKERS UNION (NAPSAWU)	Applicant
And	
PRINCIPAL SECRETARY MINISTRY OF PUBLIC SERVICE	1st Respondent
PRINCIPAL SECRETARY MINISTRY OF INFORMATION, COMMUNICATION AND TECHNOLOGY	2nd Respondent
PRINCIPAL SECRETARY MINISTRY OF AGRICULTURE	3rd Respondent
EXECUTIVE SECRETARY CIVIL SERVICE COMMISSION	4th Respondent
THE ATTORNEY GENERAL N.O.	5th Respondent
XOLILE NXUMALO	6'h Respondent
DANICIA PHIRI	7th Respondent
BONGANIFAKUDZE	8th Respondent

BETHWELL MADUNA	9th Respondent
THEMBUMEZIMAKHUBU	10th Respondent
WANDILE DLAMINI	11th Respondent

Neutral Citation:	National Public Service and Allied Workers Union Vs Principal Secretary, Ministry of Public Service and 11 Others [228/2021] [2021] SZIC 81 (2021)
CORAM:	**K. MANZINI - ACTING JUDGE** *(Sitting with Ms. N Dlamini and Mr. D. Mmango)* *(Nominated Members of the Court)*
DATE HEARD	18 October, 2021
DA TE DELIVERED	2November, 2021

JUDGEMENT

[I] The Applicant instituted motion proceedings seeking the following orders:

"(l) Dispensing with usual forms and procedures as relating to time limits and service of Court documents, that the matter be heard as one of urgency.

(1) Condoning the Applicant's no-compliance with the Rules of this Court as relate to service and time limits.

(2) That a *rule nisi* do hereby issue calling upon the Respondents to show cause on a date to be determined by the honorable Court why an order in the following terms should not be made final;

(i) Interdicting Government and or the Respondents from direct treat with the employees who are members of the Applicant with immediate effect pending final determination of this Application.

(ii) Interdicting Government and or the Respondents from entering into and or concluding any agreements through direct treat with immediate effect pending final determination of this Application;

(3) Prayers 1,2,3,3.1 and 3.2 to operate with immediate interim effect pending finalisation of this matter.

(4) Declaring the conduct by Government of by passing the Applicant and treating directly with the members of the Applicant and all meetings convened in violation of the Recognition Agreement direct with employees who are members of the Applicant as unlawful, null and void for all intents and purposes thereof.

(S) Declaring all and any purported agreement that may have been concluded by and between the members of the Applicant with the Government and or the Respondents in particular Annexure "E" in violation of the Recognition Agreement as unlawful, null and *void ab initio.*

(6) Costs of the Application in the event it is unsuccessfully opposed.

(7) Further and or alternative relief."

[2] The application was opposed by the Respondents who accordingly filed answering affidavits. The Applicant also filed its replying affidavit. The Applicant thereafter filed an interlocutory application for leave to file two supplementary affidavits to the substantive application on the basis that

new developments and or events that had occun-ed after the Court had issued an order. The said interlocutory application was filed by the Applicant herein on the 11th of October, 2021, whilst the Interim Court Order interdicting the Respondent and or Government from direct treat with the employees who are members of the Applicant was issued on the 31st day of August, 2021.

[3] The Respondents herein object to the filing of the supplementary affidavits and duly raised preliminary issues relating to the question of whether or not this Court is at liberty to exercise its discretion to allow the submission of the supplementary affidavits. It was argued by the Attorney for the (1st) first to fifth (5th) Respondents that the Court should not allow the Applicant hereinto file the supplementary affidavits.

[4] The Interlocutory application is opposed by the Respondent's attorney for the 1st to 5th Respondents, and the parties will be refen-ed to as cited in the main application.

[5] The Att01ney for the pt to 5th Respondents objects to the filing of the Supplementary affidavit, and argued that the application for the leave to file Supplementary affidavit is tantamount to begging the Court for condonation for the late filing of Heads of Argument. He argued that on the strength of the Supreme Court Judgement of **Tuntex Textile(Pty) Ltd and Another v Eswatini Government and Others (36/2018) [2018] SZSC28 (31 May 2019),** the Applicant *in casu* should not be allowed leave to file the Supplementary affidavits for the following reasons:

(a) The Applicant's application for leave to file the Supplementary affidavits did not state which affidavits that they sought to supplement, and further did not disclose the special circumstances that require the further affidavits. He went on to argue that the requirements of applying for leave for condonation for late filing of the Heads of Argument as detailed in the case of **The Swazi Observer Newspaper (Pty) Ltd t/a Observer on Saturday and 2 Others V Dr. Johannes Futhi Dlamini (13/2018) [2018] SZSC 26 (19 September, 2018) in the following manner:**

(i) Valid explanation for the delay/ exceptional circumstances
(ii) Prospects of Success

[6] The Attorney for the 1'1 to 5th Respondents further referred to the High Court case of **Peter Ronald Cooper N.O. v D.B.O Investments (Pty) Ltd Civil Case No. 675/98,** which case highlighted that the party which seeks to beg leave from Court to file a Supplementary affidavit must explain why he did not include such information that he now wants to
· place before Court.

[7] The Applicant's Attorney in his response pointed out that he is not seeking condonation for late filling of Heads of Argument herein, but, is merely begging leave from Court to file the Supplementary affidavits. He pointed out further that the requirements on the submission of Supplementary affidavit are not as stringent as those of condonation for late filing of Heads of Argument. He referred therefore to the work of **Stephen Pete *et al,*** "Civil Procedure; **A Practical Guide",** on page 132, where the Learned Authors stated that an oral application may be made to Comi requesting leave to file further affidavits after the Applicant's replying affidavit has been filed. The Learned Authors explained that the Court may deem special circumstances to exist to justify the filing of the further affidavit where new evidence has come to the attention of the parties at a later stage.

[8] The rules of this Court do not make a provision for the filing of further pleadings after a replying affidavit has been filed. **Rule 28 (a)** of the **Industrial Court Rules 2007** provide that:

"[W]here these Rules do not make a provision for the procedure to be followed in any matter before the Court, the High Court Rules shall apply to proceedings before the Court with such qualification, modification and adaptation as the presiding Judge may determine."

[9] For this reason it is important for this Court to then refer to the **High Court Amendment Rules 1990** for guidance herein. **Rule 28 (8)** provides the following:

"[T]he Court may during the hearing at any stage before Judgement grant leave to amend any pleadings for document on such terms as to *it* ***seems flt."***

[l OJ It is trite that in deciding whether a party may be granted leave to file

Supplementary affidavit, the Court has a discretion, which it has to exercise in a judicious manner (See the Appellate Division in **James Brown and Hammer (Pty) Ltd v Simmons 1963 (4) SA 656 at 660 E G 1** held the following:

"It is in the interests of the administration of Justice that the well known and well-established general rules regarding the number of* sets *and the proper sequence of affidavits in motion proceedings should ordinarily be observed. That is not to say that those general rules must always be rigidly observed: some flexibility controlled by the presiding Judge exercising discretion in relation to the facts of the case before Court, must necessarily also be permitted. Where as in the present case, an affidavit* is *tendered out of its ordinary sequence, the party tendering it, is seeking not a right, but an indulgence from the Court, he must advance his explanation of why the affidavit is late, it should, having regard to all the circumstances of the case, hereafter be received."

[17] This Court, guided by the above stated authority, and also by **Section 11 (1) of the Industrial relations Act, 2000 (as amended),** is inclined to rely on the general premise that the Industrial Court is one of equity, and is not to be bound to the strict standards that operate in the Higher Courts of this count1y such as the **Ronald Cooper Case (supra),** which is a High Court case. This Court also finds there is a marked difference between seeking the Court's indulgence to file Supplementary affidavits, and the more rigorous talk of seeking condonation for the late filing of Heads of Arguments as was the case in the Supreme Court decision cited and relied by the Attorney for the 1st to 5th Respondents in the **Tuntex Textile (Pty) Ltd** & **Another case (supra).**

[18] The Attorney for the Applicant herein explained in his arguments that it was important for the Supplementary affidavits to be filed because subsequent to the Court issuing an interdict against Government and/or the Respondents for direct treat with the members of the Applicant, the Respondent had proceeded to do so, regardless of that Court order. This is clearly a new development in the eyes of this Court, and the Court herein finds that this is information and/or evidence that is pe1iinent for when the matter is heard in a wholistic fashion. The Court finds that the material which is sought to be raised in the Supplementary affidavit is relevant to the issues for determination of the main claim or application. The Comi herein also finds that there is no *mala fides,* or negligence

relating to why the information/evidence could not be put to the Court at

an earlier stage (and none was alleged by the Attorney of the 1st to 5th respondents in any event). The Court herein is further satisfied that no prejudice will be caused to the Respondents.

[19] The Court herein is not convinced that the Applicant should not be allowed to file Supplementary affidavits. This Court has on other occasions permitted the filing of Supplementary affidavits where it is in the interests of the administration of justice. It is trite that the well established general principles relating to the number of sets and the proper sequence of affidavits in motion proceedings should in the ordinary course of events be adhered to. This however, is not to say that these said general principles must be applied in a rigid manner, without some flexibility, which remains within the control of the presiding Judge who is exercising his discretion, depending on the facts before him (**see:**
T. Vilakati v Lidwala Insurance Company I.C. Case No. 300/17).

[20] The Honorable Court, in the exercise of its discretion hereby makes the following order.

(a) The Applicant is granted leave to file it Supplementary affidavit.

(b) There is no order as to costs.

K.MANZINI
ACTING JUDGE OF THE INDUSTRIAL COURT

FOR APPLICANT: Mr. M.L.K. Ndlangamandla
(MLK Ndlangamandl Att0111eys)

FOR 1ST TO 5TH RESPONENT: Mr. Mbuso Simelane
(Attorney General's Chambers)

FOR 6TH TO 11TH RESPONDENT: Mr. M. Khumalo
(Khumalo Attorneys)