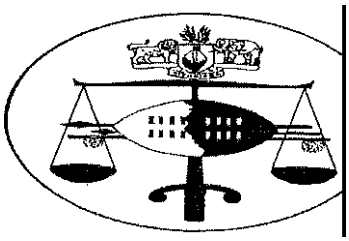

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE Case No 340/2022

In the matter between:

BEZA ENGINEERING KENYA LIMITED Applicant

And

MEKONNEN TADESSE HAMELMAL Respondent

In re:

DIGALFIE WONDWOSSEN KIBRET 1st Applicant

MEKONNEN TADESSE HAMELMAL 2nd Applicant

KELEAB TESHOME GEBRE 3'd Applicant

And

BEZA ENGINEERING KENYA LIMITED 1st Respondent

MINISTRY OF PUBLIC WORI(S AND TRANSPORT 2nd Respondent

THE ATTORNEY GENERAL 3rd Respondent

Neutral citation: Beza Engineering Kenya Ltd v Mekonnen Tadessse Hamelmal Agency In re;Digalfie Wondwossen Kibret and 2 Others v Beza Engineering and 2 Others [32/22) [2022] SZIC 36 (07 April 2022)

Coram: **NGCAMPHALALA AJ**
(Sitting with Mr.MP. Dlamini and Mr. E.L.B. Dlamini, Nominated Members of the Court)

Date Heard: 2pt March, 2022

Date Delivered: 7th April, 2022

SUMMARY: Application brought on a certificate of urgency- setting aside garnishee notice in terms of high court rule 45(13)(a)-application opposed- points in limine raised- failure to meet requirements of an interdict-doctrine of unclean hands- abuse of Court process.

Held- ***Point in limine upheld- failure to meet requirements of an interdict-doctrine of unclean hands- application dismissed- no order as to costs.***

JUDGMENT

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[l] The Applicant is Biruck Sintayhu Tedla, a Kenyan adult male, the Eswatini Office Administrator of the Applicant.

[2] The Parties in the matter are as they are described in the main matter save to state that the 1st Respondent in the main matter is the Applicant herein and the 2nd Applicant in the main matter is the Respondent herein.

[3] BRIEF BACKGROUND

The present proceedings seek to set aside as invalid and unlawful the garnishee notice issued by the Respondent against the Applicant's banking account. Further that the Respondent or anyone holding the funds

transferred from the Applicant banking account to pay the funds to the Applicant's banking account fo1ihwith. That pending the determination of the matter the Respondent be interdicted from utilizing or in any way dissipating the funds. It is on this basis that the Applicant has approached the Court under a Certificate of Urgency, seeking an order in the following terms:

3.1 · That the usual forms and services relating to the institution of proceedings be dispensed with and that this matter be heard as one of urgency;

3.2 Condonation for the failure to adhere to the rules of the above Honourable Court as they relate to time limits and service of Court process;

3.3 Setting aside as invalid and unlawful the garnishee notice issued by the Respondent against the Applicant's banking account;

3.4 Directing the Respondent or anyone else holding the funds transferred from the Applicants banking account to repay the funds to Applicant's banking account forthwith;

3.5 That pending the final determination of this matter the Respondent or anyone else holding the funds be interdicted from utilizing or in any way dissipating the funds;

3.6 Costs of suit at attorney and own client scale; and

3.7 Such further and/or alternative relief as the above Honourable Courf may deem fit.

[4] The Applicant's Application is opposed by the Respondent and an Answering Affidavit was duly filed and deposed thereto by Mr. Makonnen Tadesse Hamelmal the Respondent. The Applicant however did not file a Replying Affidavit.

[5] The matter came before Court on the 15th March, 2022 wherein the parties agreed on timelines for the filing of all pleadings, heads of argument and agreed that the matter would be argued on the 18th March, 2022. On the said return date, the matter did not proceed as the parties had not complied with the timelines for filing as agreed. The matter was accordingly postponed to the 2!5[1] March, 2022, on which date the matter was argued and judgment reserved. The parties further agreed to deal with the matter holistically, dealing with the points *in limine* therein raised then the merits.

ANALYSIS OF FACTS AND APPLICABLE LAW

[6] Through his Answering Affidavit the Respondents, raised point *in limine:*

(a)Ad failure to satisfy the requirements of an interdict
(b)Ad abuse of Court process
(c)Ad approaching the Court with dirty hands

[7] The present matter has a history before this Honourable Court, having first been heard on the 17th December, 2021, wherein a consent order was granted in favour of the Respondent. It is common cause that it was consensually agreed that the Respondent is owed allowances, and arrear salaries by the Applicant and that same would be paid by the Respondent on the 3 pt December, 2021, however this did not happen. The case as a result appeared before Court on several occasions, to deal firstly with the actual amount owed, and for proposal of a settlement agreement on payment terms. This came about after the Applicant in the present proceeding, advised that it was failing to pay the Respondent due to financial constraints on it.

[8] In terms of the proposed settlement, which is now the subject matter leading to the present application, the Respondent was scheduled to make monthly payments with effect from the 3rd February,2022 which it has been submitted the Applicant failed to do, leading to a garnishee notice being issued against it. It is further common cause that the Respondent on the 16th February, 2022, served a garnishee notice on the Applicant's bank, Standard Bank Eswatini, for the amount of 46,900.00 USD. The garnishee was accepted by the bank, and funds in the amount of E319, 000.00 in the Applicants bank account were transferred to the Respondent's att01ney banking account.

[9] First to address the Court on the issues was the Applicant, whose submission was that there are two legal points to be answered; firstly, was the garnishee notice issued in full compliance of **Rule 45 of the High**

Court Rules, and the second point being whether the funds that were in the Applicant's bank account belong to Applicant or a third party? It was Mr. Tsambokhulu's submission on behalf of the Applicant that if the Court finds in its favour on the first point, then there is no need to deal with the second, as the results would be the same.

[1O] It was the Applicant submission that the garnishee notice issued by the Respondent, was irregular in that it was issued without firstly issuing a court order, warrant of execution or a notice of attachment. It was the Applicants averment that the garnishee notice was unlawfully issued and stands to be set aside as invalid and ineffective. It was the Applicant's fmiher submission, that the Rule that is the subject to debate is **Rule 45 (13) (a),** which should be read together with **Rule 45 (9)** to fully understand the principle. **Rule 45 (13) (a) of the High Court Rules** provides as follows:

> *'whenever it is brought to the knowledge of the sheriff that there is a debt which is subject to attachment, and is owing or accruing from a 3rd person to the judgement debtor, the Sheriff may, have requested by the Judgment Creditor, attach such debt, and there upon serve such notice on such person (herein called the garnishee), requiring payment by him through the Sheriff of so much as the debt may be sufficient to satisfy the Writ and the Sheriff may upon such payment give a receipt to the garnishee which shall be discharged pro tanto, of the debt attached'*

[11] Whilst **Rule 45 (9) (c) of the High Court Rules** provides as follows:

"In the case of the attachment of other incorporeal property or incorporeal rights in the property as aforesaid - The attachment shall only be complete wherein;

(a) Notice of the attachment has been given in writing by the Deputy Sheriff to all interested parties ...

(ii) the Deputy sheriff may upon exhibiting the original of the warrant of execution to the person having possession of the property in which incorporeal rights exist, enter upon the premises where such property and make an inventory and valuation of the right attached. "

[12] It was the Respondents submission that the Applicant has purported to act in terms of the **Rule 45 (13) (a)** in issuing the garnishee notice. It was its averment that **Rule 45 (13) (a)** requires that firstly there be a court order sounding in money, thereafter the Deputy Sheriff must issue a notice of attachment or writ of execution and serve same on all interested parties. This serves the purpose of attaching the debts and it was Respondents arguments that this is done in tenns of **Rule 45 (9) of the High Court Rules,** thereafter the Deputy Sherriff will then serve a garnishee notice in terms of **Rule 45 (13) (a).**

[13] In support of this argument, the Respondent referred the court to the case of **SOUTH AFRICAN CONGO OIL COMPANY (PTY) LTD V INDENTIGUARD INTERNATIONAL (PTY) LTD (710/11) (2012) ZASCA,90.** The Respondent argued that in the present matter, there is no court order sounding in money, there is no writ of execution issued in terms

of **Rule 45 (1),** and further there is no notice of attachment issued in terms of **Rule 45 (9).** What the Respondent simply did was issue out a garnishee notice to the bank, without the prior service of a notice of attachment to itself on the transferring of the funds from its bank account.

[14] The Applicant contended that the Respondent was required to issue a writ of execution or at least a notice of attachment of the funds before the issuance of the garnishee. It averred that a garnishee notice issued without compliance with the antecedent provisions of **Rule 45** is invalid and was unlawfully issued by the Respondent. Therefore it is in law ineffectual and all processes carried into effect on its supposed strength fall to be set aside. In support of this argument, the court was referred to the case of **MATER DOLOROSA HIGH SCHOOL V NEDBANK SWAZILAND LIMITED AND 2 OTHERS HIGH COURT CASE NO. 2265/04**

[15] On the second issue of whether the funds belong to the Applicant or not, Applicant averred that for any attachment to pass muster the said question does the property attached belong to the. Judgment Debtor, must be answered in the affirmative for attachment to take place. The court was referred to the case **ofLUMBELA GENERAL TRADERS CCV SWAZI INDUSTRIAL AGENCIES T/A BUILDERS DISCOUNT CENTER SUPREME COURT CASE NO. 15/19 SZSC 52, AND HERBSTEIN AND VAN WINSEN, THE CIVIL PRACTICE OF THE HIGH COURT OF SOUTH AFRICA, 5n[1] EDITION, VOL 2 AT PAGE 1020,** where the author explains when and how execution may be effected.

[16) It was the Applicant submission that it is axiomatic that attachment is valid only if it is against the Judgement debtor (Applicant in the current proceedings). He averred that in the current instance the Respondent has proceeded against property that does not belong to the Applicant, but the funds belongs to the Kingdom of Eswatini. It averred further that Government is not party in the main application, and no order was sought against it, nor was any order granted against the Government, therefore no funds can be claimed from it by the Respondent.

[17) The Respondent referred to correspondence addressed by one Mr. Yusi W. Mabuza on the Ministry of Public works and Transp01i letter head whose position is Project Manager, in support of this argument. It was its submission that the funds belong to the Swaziland Government who is the client and not the Applicant. The funds were merely paid to the Applicant for onwards transmission, the funds were not paid for the benefit of th.e Applicant. Therefore the funds do hot form part of property or a debt owed to the Applicant capable of being attached. As a result, the transfer should be set aside and reversed.

[18) In closing the Applicant dealt with the points *in limine* raised by the Respondent. On the first point of law as raised of dirty hands it was, Applicants averment that same has been irregularly raised and stands to be dismissed. It was averred further that unless the Respondent could point out a deliberate and settled intention on the part of the applicant to act fraudulently, dishonestly or outright in defiance of the Court Order, the point is misplaced. Mr. Tsambokhulu submitted further that a judgement

sounding in money does not fall within the categories of conduct under the contemplation of dirty hands. It was his averment that it would be an entirely different scenario if the Applicant had been paid by Government and the Applicant was now deliberately not to pay the Respondent.

[19] He then proceeded to deal with the second point *in limine,* of the alleged failure by the Applicant to meet the requirements of an interdict. It was his argument that the Applicant is not seeking an interdict, and if it was then the Court is referred to the bundle of authorities on page 48 paragraph 10.4, being the case of **WENDY YOUNG V LISA EVANS AND 3 OTHERS, HIGH COURT CASE NO. 1008/18.** Wherein the Court held that it is a norm for parties to plead requirement of an interdict as a point *in limine,* and went on to state that this is not a point of law certainly no not one to be raised *in limine.* It was the Applicant submission that this point *in limine* should fail on these grounds.

[20] In dealing with the last point raised *in limine,* it was the Applicants submission that it is entitled to approach the Comi, where it believes an injustice has been committed. Further that it has sufficiently made a case before the Court. Therefore, it was its submission in conclusion that the funds be returned to its bank, as the funds do not belong to it but the government ofEswatini.

[21] In rebuttal the Respondent began by giving a brief history of the matter. It was the Respondent's submission that it is common cause that he is not from the country, /peregrinus, and that his contract of employment with the

Applicant lapsed in December 2021. It was his averment that immediately the issue of his unpaid salary arose. The Respondent through his then Attorneys Robinson Bertram, brought an Urgent Application before Court, wherein the Applicant confirmed money owed to the Respondent and several other employer. The parties then entered into a settlement agreement however, with the Applicant insisting that the application be withdrawn before effecting payment, as it was detrimental to its reputation.

[22] Respondent submitted that he was however not paid his arrear salary and again had to approach the Court, wherein on the 17th December 2021 a consent order was granted in his favour. It was his argument that in terms of the Court order the Applicant undertook to pay his salary together with due allowances on or before the 31st December 2021. The Applicant however failed to pay the arrear salary and further did not give an explanation on his failure to do so. The matter again in February, 2022 came before Court, wherein the Court and the parties agreed on a total amount owed and therein the Applicant further requested to now pay the arrears in instalments and requested that a deed of settlement be signed. The Court was referred to page 46 of the Book of Pleadings which is a letter from the Applicant confirming the proposed settlement of US I 0 000.00,and the Court was advised, that it was only in this cotTespondence that the issue of unavailability of funds arose.

[23] It was therefore the Respondents submission that there is a court order that was granted by the Court and that such court order is still in force. The Respondent further submitted that several correspondences and Couti

appearances were made by the parties thereafter, wherein the Applicant at all material times promised to pay the Respondent. A settlement agreement as agreed was also prepared by the Respondent for the signature of the Applicant, however the Applicant failed to sign the settlement and further failed to forward the arrears payments of Respondent salary as per the Court order. It was after this failed attempt that the Respondent then proceeded to issue out a gainishee notice against the Applicant.

[24] It was the Respondents submission that the garnishee notice issued by the Respondent was in accordance with **Rule 45 (13) of the High Court Rules.** It was his further submission that the High Court Rules ought to be applied in the context of the employment and or Industrial Relations. Particularly since the issue pending before Couit is the payment of arrears salary, and a simple reading of the Rules of the High Court cannot be applied in this context, for obvious reason that arrears salaries are different from the term debt as envisaged in the High Court Rules and also supported by **Section 8** of the **Industrial Relations Act 2000 (as amended).**

[25] It was the Respondent's argument that from the reading of **Rule 45 (13)** it is clear that a writ of execution is not a requirement prior to the issuing of a garnishees notice and further that a notice to the judgement debtor is also not a requirement. It was therefore his submission that the argument by the Applicant that for a garnishee to be lawful there must be a writ of execution, is bad in law and not supported by the Rules.

[26] It was his submission that he elected to proceed with a garnishee notice against the Applicant and not a writ, because it is common cause that the

Applicant does not have any property to be executed or attached in the country. He averred further that to require him to issue a writ of execution would unnecessarily put him out of pocket, because it was already common cause that nothing could be attached. The Respondent further argued that the main complaint in the Applicant papers is that the Respondent did not issue a writ of execution prior to issuing the garnishee notice. Further that there is no court order, nor writ of execution. It was his submission that this argument is devoid of the truth as he submitted that a court order was served on the Applicants Attorney as such this argument is clearly an attempt to mislead the Comt. Further the applicant is a peregrinus in this jurisdiction therefore he has no assets to attach.

[27] The Respondent continued to state that the Applicant has sought deliberately to change or supplement its case in its heads of arguments. The issue in contention now being that the Respondent did not issue a notice of attachment when issuing the ga1nishee notice. The Respondent argue that this is bad in law and that the Applicant should stand or fall on its papers. He averred'that the Applicant has not made a case in its founding papers, and has sought to address new issues in its head of arguments. The Court was referred to the case of **NGWANE MILLS PTY LTD V SWAZILAND COMPETITION COMMISSION AND 4 OTHERS CASE NO. 2589/11**

[28] It was his averment that the Applicant has sought to supplement its case in its heads of arguments which is not permissible. The Applicant has further failed to file a replying affidavit and the principle of the law is that the Respondents case remains uncontroverted. It was his averment that the

conduct of the Applicant of attempting to evade compliance with the court order is completely disdainful. The Respondent then proceeded to deal with the points in *limine* that it has raised in its answering affidavits.

[24] On the first point of failure to satisfy the requirement of an interdict, it was the Respondents submission, that the Applicant has failed to plead and alleged a clear right to the order sought before Court. It was his averment that the nature of the Applicants prayer seek to compel a certain act to be done, particularly the transfer of funds to the Applicant's bank account. This act is a positive act and an interdict. It is trite law that where a party seeks an interdict before Court, that party must demonstrate a clear right to the order sought. The Court was refen-ed to the case of **NGCAMPHALALA AND ANOTHER V SHIBA AND OTHERS (365/2019) SZHX60.** Respondent argued that the applicant has failed to show a clear right in the present case.

[29] He then proceeded to the second point *in limine* raised by himself that of dirty hands. It was the Respondent argument that the Applicant is approaching the Court with dirty hands. It was submitted that it is a trite position of our law that before a litigant seeks to establish his right in a Court of law, he must approach the Court with clean hands. Wherein he himself , through his own conduct makes it impossible for the process of the Court to be given effect, he can not aske the court to set aside the machinery in motion to protect his own right and interest and may not approach the Court with dirty hands. The Court was referred to the case of **Muzi P. Simelane V The Chief Justice of Eswatini and 2 Others (1508/2020) SZHC221.**

[30] Respondent averred that the Applicant has failed and or refused to pay the Respondents arrears salary as per the order of the 17th December 2021. Further even after being afforded latitude to settle the arrears the Applicant has failed to do so. Respondent further argued that despite the Applicant having funds in its bank account, it has failed and or neglected to pay the Respondent. The last point *in limine* argued by Respondent was the abuse of the Court process by the applicant. It was his submission that the applicant is aware that he has an obligation to pay the Respondent his salary, but instead has decided to frustrate the process of paying Respondent his arrears salary. He averred that this is much against the decision of the Court that the issue of salary must be treated urgently. He continued to state that the attitude of the Applicant is to frustrate the right of the Respondent with vexatious court applications. Therefore the garnishee notice was rightfully issued by himself in compliance with **Rule 45 (13) (c)** of the High Court Rules and the conduct of the Applicant in trying to evade compliance with the order of Court is completely disdainful, and should not be condoned.

REQUIREMENTS OF THE GROUND OF AN INTERIM ORDER HAVE NOT BEEN MET

[31] The Respondent has argued that the Applicant has failed to satisfy the requirements of an interdict. It being argued that the Applicant has failed to satisfy all the requirements of an interdict. The Respondent cited authorities in support of this argument. The Applicant on the other hand has argued that it is not require to set out the elements of an interdict,

firstly because it is not seeking for and interdict,secondly it was its argument that Mlangeni J in the matter of **WENDY YOUNG V LISA EVANS AND THREE OTHERS, HIGH COURT CASE NO 1008/lSSZHC,** stipulated that failure to meet requirements of an interdict is not one to be raised as a point *in limine.*

[32] It is trite to our law that for an Applicant to succeed in obtaining an interdict the Applicant must establish the following requirements:

(i) The existence of a clear right;
(ii) Apprehension of irreparable harm;
(iii) The absence of alternative relief;
(iv) The balance of convenience.

[33] In the case of **Magagula and Others vs Acting Judge of the Industrial Court, High Court Case No. 112/14,** the Court held:

"a Court must be satisfied that the balance of convenience favours the grant of an interim interdict. It must juxtapose the harm to be endured by an Applicant if interim relief is not granted with the harni the Respondent bear if the interdict is granted. Thus, a Court must assess all relevant factors care/ully in order to decide where the balance of convenience rest".

[34] The question the Court must determine is whether the Application before the Court is for an interdict. The Court has considered the arguments submitted and pleadings filed and finds that the answer to the question is

to the affirmative. In its own papers in particular prayer three of the Founding Affidavit, the Applicant prayer is:

"Setting aside as invalid and unlawful the garnishee notice iss ed by the Respondent against the Applicant's bank ..."

When defining what an interdict is, **BLACK'S LAW DICTIONARY, 7TH EDITION, 1999** defines an interdict as, **"an** *injunction or other prohibitory decree."*

HERBSTEIN AND VAN WISSEN, THE CIVIL PRACTICE OF THE SUPREME COURT OF SOUTH AFRICA, 4TH EDITION,1997 AT PAGE 1063, goes on to define an interdict as, *"an order made by a court prohibiting or compelling the doing of a particular act for the purpose of protecting a legally enforceable right which* is *threatened by continuing or anticipated harm.* "

[35] Other scholars have defined it as, the removal of a person's right to handle decree of the praetor by means of which, in certain cases determined by the edict, be himself directly command what should be done or omitted, particularly in cases involving the right of possession or a quasi-possession. It apparent therefore from the above definitions that the Applicant has approached the Court seeking an interdict

[36] Its further argument was that even if that were so, the Cou1t held that failure to meet requirements of an interdict cannot be argued as a point in limine, see case of **WENDY YOUNG V LISA EVANS AND OTHERS SUPRA.** The Court differs from the view as argued by the Applicant. It is evident

that the facts in the above matter were peculiar to the facts before this Court. The Court held that in that matter the need for the requirement of interdict with reference to a new matter contained in a provisional Answering Affidavit could not stand as a point *in limine.* The 1st Respondent in that matter purported to raise the point on material facts which had been raised for the first time in its provisional affidavit, and it was on this basis that the point *in limine* was dismissed.

[37] It is trite in our jurisdiction that before and interdict may be granted, the requirement of an interdict must first be met. From the evidence adduced during arguments and referred to above it is evident that the Applicant has failed to meet the requirements and has failed to show that the balance of convenience favours that an order be granted in his favour. He has fu1ther failed to show the absence of alternative relief. Clearly therefore it cannot be said that good cause has been shown for the Court to grant the interdict sought by the Applicant. The point *in limine* therefore succeeds.

[38] The second point *in limine* was articulated with precision by Nathan CJ (as he then was) in the case of **PHOTO AGENCIES (PTY) LTD V THE ROAD POLICE & ANOTHER 1970 SLR 398,** cited with approval in the case of **MULLIN V MULLIN 1925 WLD 165,** wherein *His Lordship De Waal J* dealt with the doctrine of unclean hands in the following manner:

> *"Before a person seeks -to establish his rights in a court of law, he musi approach the court with clean hands; where he himself through his own conduct makes it impossible for the process of the Court*

(whether criminal or civil) to be given effect to he cannot ask the court to set its machinery in motion to protect his civil rights and interests... were the Court to entertain a suit at the instance of such a litigant, it would be stultifying its own processes, and it would, moreover, be conniving at and condoning the conduct of a person who through his flight from justice, sets law and order in defiance. "

[39] The doctrine of unclean hands is a well-established one which has found application in our jurisdiction. Several cases within our jurisdiction have dealt with this doctrine, which include; **HOAGEYS HANDICRAFT (PTY) LTD VS ROSE MARSHALL VILANE (HIGH COURT CIVIL CASE NO. 2614/2011); PHOTO AGENCIES (PTY) LTD VS THE ROYAL SWAZILAND POLICE & ANOTHER 1970 - 76 SLR 398.**

[40] Other cases in which this doctrine found application in our jurisdiction include that of the **ATTORNEY GENERAL VS RAY GWEBU** & **ANOTHER' (HIGH COURT CASE NO. 3699/02); SIBONISO CLEMENT DLAMINI VS THE CHIEF JUSTICE OF SWAZILAND** & **TWO OTHERS (1148/2019) [2019] SZSC** (8 November 2019).

[41] The doctrine of unclean hands stipulates that whenever a party who as an actor seeks to set the judicial machinery in motion and obtain some remedy, has violated conscious, good faith, or other equitable principle in their prior conduct, then the doors of the court will be shut against them *in limine.* Th Court will refuse to interfere on their behalf or acknowledge their right, or award them.

[42] In the present matter the Court issued a Consensual Order on the 17th December, 2021. The order as endorsed and it stipulated; that the Applicant be paid his allowances by the 20th December, 2021; and full backdated salary to be paid on or before the 3 pt December, 2021. This Order was at no material times set aside by the Court or reviewed. What later transpired during the course of the matter was the averments by the Applicant that it was under financial difficulty, and as a result thereof it proposed a settlement of the arrear salaiy in instalments.

[43] The proposal of the Settlement Agreement, did not in any way set aside the Order of the 17th December, 2021, it was merely proposed in an attempt to meet the Applicant half way, but despite this, even at the hearing of this matter, the Applicant had not attempted to make any payment, even to comply with the proposed stagnated payment in the Settlement Agreemen1;, as a sign of compliance. As stated above it is this Court that granted the Order of the 17th December, 2021, the Court cannot therefore be seen to be going against its own decision. In any event, the Applicant's failure to comply with the Court Order, impedes the course of justice. It seeks to demonstrate that Orders of the Court are ineffective as they can be disobeyed with impurity. Such conduct cannot be countenanced.

[34] The Applicants argument, that the no compliance with the Order of Court has not been deliberate, as a fraudulent act, dishonest act, or an outright defiance of the Court Order, does not hold water. The Applicant has failed to convince the Comt, that it has made satisfactory means to attempt to comply with the Comt Order, nor has it brought the Court into its

confidence, on the attempts it has made to comply with Order. Fore the foregoing reasons it is the finding of this Court that the Applicant is approaching the Court with dirty hands. He cannot therefore be heard by this Court. The point *in limine* is therefore upheld.

[45] The Court will not deal with the subsequent point *in limine* that was dealt with by the Respondent Abuse of Court process, as the doctrine of unclean hands as raised by the Respondent has succeeded. Taking into account all the circumstances of the case, the interests of justice, fairness and equity, based on the points of law upheld, the present application cannot succeed and is hereby dismissed.

[46] This is the Order of Court:

1) The application is dismissed.

2) There is no order as to costs.

The Members Agree.

ACTING JUDGE OF THE NDU STRIAL COURT OF SWAZILAND

For Applicant: Mr. H. Tsambokhulu (Maseko Tsambokhulu Attorneys).

For Respondent: Mr. S. Kunene (KN Simelane Attorneys, in association with Henwood and Company)