



**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

Case No136/19(b)

In the matter between:

**EMMANUEL L. MAZIYA**

Applicant

And

**ESWATINI REVENUE AUTHORITY**

1<sup>st</sup> Respondent

**COMMISSIONER GENERAL**

2<sup>nd</sup> Respondent

**CUSTOMS MANAGER NGWENYA BORDER POST**

3<sup>rd</sup> Respondent

**CUSTOMS AND EXCISE DIRECTOR**

4<sup>th</sup> Respondent

**COMMISSIONER CUSTOMS**

5<sup>th</sup> Respondent

**Neutral citation:** Emmanuel L. Maziya v Eswatini Revenue Authority and 4 Others [2022] SZIC 54 [136/19 (b) (09 May, 2022)

**Coram:**

**NGCAMPHALALA AJ**

*(Sitting with Mr.D.P.M. Mmango and Ms. N. Dlamini,  
Nominated Members of the Court*

**DATE DELIVERED:** 09<sup>th</sup> May, 2022

***SUMMARY: The Applicants instituted the present application for stay of execution of judgment of the above Court issued on 10<sup>th</sup> October 2019 pending finalization of Appeal under case no. 16/19 and review proceeding at the High Court under case no. 1416/20- Respondent opposes the application on the basis that there is no connection between the charges and issues pending before the Industrial Court and the High Court.***

***Held – Application for Stay of execution granted, no order as to costs.***

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### **JUDGMENT**

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- [1] The Applicant is Emmanuel L. Maziya an adult LiSwati male employed by the 1<sup>st</sup> Respondent.
- [2] The 1<sup>st</sup> Respondent is Eswatini Revenue Authority, a body corporate, duly established by statute, the Swaziland Revenue Act, having its principal place of business at Ezulwini, at SRA Building under the district of Hhohho.
- [3] The 2<sup>nd</sup> Respondent is The Commissioner General, cited in his capacity as the Chief Executive Officer of the 1<sup>st</sup> Respondent in charge of all legal proceedings, having its principal place of business at Ezulwini at the 1<sup>st</sup> Respondent's head office.
- [4] The 3<sup>rd</sup> Respondent is Customs and Manager Ngwenya Border Post, cited as the officer in charge of the border posts where the Applicant is stationed, at Ngwenya Border post under the district of Hhohho Region.

[5] The 4<sup>th</sup> Respondent is The Custom Excise Director, cited herein in his nominal capacity as the office which is in charge of the customs officers in the border post in Swaziland, having his principal place of business under the district of Hhohho.

[6] The 5<sup>th</sup> Respondent is The Commissioner Customs, cited herein in his official capacity as the officer in charge of all customs and excise matter of the 1<sup>st</sup> Respondent, having its principal place of business at Ezulwini under the district of Hhohho.

[7] **BRIEF BACKGROUND**

The present proceedings seek to stay the execution of a judgment of this honourable Court, and to stay any action that the Respondent may wish to undertake against the Applicant pending finalization of an appeal lodged by the Applicant and review proceedings at the High Court. It is on the basis of the above that the Applicant instituted the present proceedings against the Respondents.

[8] The Applicant has approached the Court under a certificate of Urgency, seeking an order in the following terms:

**8.1 Dispensing and condoning the Applicant's non -compliance with the rules of court in terms of manner of service, time limits and hear this matter as one if urgency.**

**8.2 Directing and ordering that the execution of the ruling/ judgment handed down by the above Honourable Court on the 10<sup>th</sup> October, 2019 and any action that the Respondents may intend to take against the Applicant be hereby stayed pending finalization of the Appeal under case no 16/19.**

**8.3 That a rule nisi is hereby issued to operate with interim and immediate effect in terms of prayer 8.2, returnable on the date to be determined by the above honourable**

**8.4 Cost of suit.**

**8.5 Such further and/or alternative remedy.**

[9] The Applicants Application is opposed by the Respondent and an Answering Affidavit was duly filed and deposed thereto by the Respondents Commissioner General, Mr. Dumsani Masilela. The Applicant thereafter filed its Replying Affidavit. After the filing of all pleadings and heads of arguments, the matter came before for argument and judgment reserved.

## **ANALYSIS OF FACTS AND APPLICABLE LAW**

[10] It was the Applicant's submission that it instituted legal proceedings under case no. 136/19 seeking inter alia, reinstatement of his salary, stay of his transfer and declaring the stoppage of his salary, without being given audience unlawful. His claim was dismissed by the Court but he successfully challenged same at the Industrial Court of Appeal, and the matter was

subsequently referred back to the Industrial Court for determination of the salary stoppage.

[11] On the day of the hearing of the matter, after the referral to the Industrial Court, an agreement was reached between the parties and the Applicant was directed to return to work and his salary from January, 2020 to May, 2020 was reinstated. The outstanding issue to be determined by the Industrial Court was the issue of the salary stoppage as at February, 2019 to December, 2019. It was the Applicant's averment that the 1<sup>st</sup> Respondents defense for non-payment of February, 2019 to December, 2019, was a breach of the contract of employment by the Applicant of absenting himself from work, thus not rendering his services.

[12] It was the Applicants further averment, that whilst awaiting the determination of the issue of his salary, and 1<sup>st</sup> Respondents failure to grant an audience before the salary stoppage, the Respondents proceeded to institute disciplinary proceedings, which was disguised as fresh proceedings, whereupon the Applicant was charged with absenteeism. It was Applicants argument that the Respondents are now meddling with a matter which is sub judice before the Industrial Court and the High Court. The matter before the Court has not been finalized and the Respondents are now instituting a disciplinary enquiry which was stayed, relating to the same matter which is still before the Courts.

[13] He averred that in 2019, he was charged with absenteeism from work from the 4<sup>th</sup> of February, 2019, then again, he was charged with absenteeism on

the 22th June, 2020. It was his submission that the same issue being determined in this Court, will determine the issues surrounding the stoppage of his salary from February, 2019 to December, 2019, which are pending before this Court and the High Court. Applicant submitted that his salary stoppage was due to having been lockout from the workplace by the Respondent and further denied access, to report to work. He further stated that his thumbprint access to the locking system was blocked, hence it was impossible for him to render his services in terms of his employment contract.

[14] In closing it was the Applicants submission that it was in the interest of justice that the disciplinary action which has been constituted by the Respondents guise under fresh proceedings scheduled for continuation, be stayed pending finalization of the matter under case no 136/19 and the High Court case no. 1416/20.

[15] In rebuttal it was the Respondent submission that there is no connection between the charges and the issue pending before this Court and the High Court. Respondent averred that a set of new charges were conferred upon the Applicant which was for specific periods. It was Respondents argued that the first charge relates to the absenteeism of the Applicant from work for a period of nine days between the 4<sup>th</sup> to the 12<sup>th</sup> February, 2019. The second charge was for absenteeism of the Applicant from work between the period, 19<sup>th</sup> February, 2019 to the 21<sup>st</sup> March, 2019.

[16] It was the Respondents contention that the charges attached to the Answering Affidavit reflect the charges of absenteeism from the period 4<sup>th</sup> February, 2019 to the day the Applicant was to appear before a disciplinary tribunal. The Respondents brought it to the Courts attention that the new charges do not cover the period where the no- work, no pay principle was applied, which in effect means that the matter pending before Court will not be affected in any way.

[17] It was its averment that there was no basis upon which the Court can review ad set aside the decision of the 3<sup>rd</sup> Respondent. It was further its averment that the Chairperson has correctly applied her mind to the facts, as placed before her and has correctly found that the matters are different. In conclusion it was the 1<sup>st</sup> Respondents argument that the only issue which remained for determination by the Court under case no. 136/19 was whether it was correct for the 1<sup>st</sup> Respondent to implement the no work, no pay without a hearing.

[18] Therefore the issue for determination before the Chairperson of the disciplinary hearing was not the issue currently before Court. Therefore, the Chairperson correctly found that the issues before her, were not under judgment or issue for trial before the Court. The Applicants application therefore should be dismissed.

[19] The Applicant in its submission states that it has noted an appeal and review proceedings on the same facts that are before Court and seeks a stay pending

determination of those pleading. **SECTION 19 (4) OF THE INDUSTRIAL RELATIONS ACT, 2000** reads as follows:

*“the noting of an appeal under subsection (1) shall not stay the execution of the Court’s Order unless the Court on application, directs otherwise.”*

Whilst **Section 152 of the Constitution of Swaziland** sets out clearly the powers of the High Court, on review application as follows:

*“the High Court shall have and exercise review and supervisory Jurisdiction over all subordinate Courts and tribunals or any lower adjudicating authority, and may in exercise of that jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its review or supervisory powers”.*

[20] A stay of execution of a Court Order/Judgement is to temporarily suspend the execution of that Court Judgement. It can be granted automatically by operation of the law or conventionally, when the parties agree that no execution shall occur for a certain period. If a party appeals or reviews a decision, or any Judgement issued by the original Court, it may be stayed until the appeal or review is resolved. In other words, a Court may grant a stay of execution in any case in which the Court feels the stay is necessary to secure or protect the rights of the aggrieved litigant.

[21] In the case of, **PHYLLIS PHUMZILE NTSHALINTSHALI V SMALL ENTERPRISE DEVELOPMENT COMPANY IC CASE NO. 88/2004,**