



**IN THE INDUSTRIAL COURT OF ESWATINI**

**HELD AT MBABANE**

**CASE NO. 43/2024**

In the matter between:-

**UNIVERSITY OF ESWATINI**

**APPLICANT**

**AND**

**THE ASSOCIATION OF LECTURES,  
ACADEMIC AND ADMINISTRATIVE  
PERSONNEL [ALAAP]**

**1<sup>ST</sup> RESPONDENT**

**NATIONAL WORKERS UNION IN SWAZILAND  
HIGHER INSTITUTIONS**

**2<sup>ND</sup> RESPONDENT**

**THE NATIONAL COMMISSIONER OF THE  
ROYAL ESWATINI POLICE [N.O.]**

**3<sup>RD</sup> RESPONDENT**

**THE STATION COMMANDER OF ESIGODVWENI  
MATSAPHA POLICE STATION**

**4<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL [N.O.]**

**5<sup>TH</sup> RESPONDENT**

**Neutral citation** : *University of ESwatini v ALAAP & 3 Others*  
*[2024] SZ IC 22 (05 March 2024)*

**CORAM** : *Dlamini J*  
*Sitting with S.P. Mamba and B. Ntando*  
*Nominated Members of the Court*

**Heard : 04 March 2024**  
**Reasons handed down: 05 March 2024**

1. I start off this judgement with the idiom '*...there is no smoke without fire!*' or '*where there's smoke there's a fire.*' The assumption here is that we all know what this proverb means. From our primary school days we were taught that this phrase means that: if people are saying that someone has done something wrong, there is usually a good reason for what they are saying! I will come back to this idiom later on.
2. This matter was filed under a certificate of urgency by the Applicant, the University of eSwatini on the last day of the month of February 2024, Thursday the 29<sup>th</sup> and to be heard at 3:30 pm. The Respondents were apparently served some 15 minutes before 1 pm on the same Thursday. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents bitterly complain about what they say are extreme time lines within which they were expected to have instructed an Attorney to represent them in these proceedings. Through their Counsel, Attorney Mr. M.M. Dlamini, they state that the Applicant was very inconsiderate by imposing such extreme time lines. I point out however that according to the Applicant's Notice of Motion, the Respondents were notified that if they intended opposing the present application, they were required to appear in Court at the appointed time and file opposing papers they may wish to and further take directions as the Court may give with regard to the filing of further papers.
3. Even though they were given slightly over 3 hours to find and instruct an Attorney who was to appear before Court at the stipulated time, they were able to meet the time line and their present Attorney, Mr Dlamini, did infact appear at the allocated time and filed his notice of intention to oppose and

requested that he be allowed more time to go through the Applicant's founding affidavit and thereafter file the Respondents' answering and supporting affidavits. Indeed the Court granted him until 9 am on the next day, Friday the 01<sup>st</sup> of March 2024, to file same.

4. The Applicant were then directed to file their replying papers by close of business, 4:30 pm, on the same Friday, together with a book of pleadings and their heads of arguments. These time lines were indeed very extreme to all the parties. Initially the understanding was that the matter was to be heard in arguments on Saturday the 02<sup>nd</sup> day of March 2024. As such, everyone involved in this matter, from the Court itself, to the litigants and their respective Counsel, was called upon to literally burn the proverbial midnight oil in readiness to do justice in arguing and determining this present application.
5. However, due to reasons which I do not wish to traverse into in this judgement, it is now common knowledge that the matter was never heard on Saturday the 02<sup>nd</sup> of March 2024, as intended. Instead, the matter was only heard on Monday, 04 March 2024. After hearing the parties in submissions and arguments, the Court undertook to deliver an *ex tempore* judgement, with the undertaking that should any of the parties require the full reasoning for the Court's decision, they should indicate such request through the office of the Registrar of this Court, and the Court will prepare them at its earliest convenience.
6. This application has been brought to Court by the country's university, the University of eSwatini [UNESWA], principally against the Association of Lectures, Academic and Administrative Personnel [ALAAP] and the

National Union of Higher Institutions [NAWUSHI] orders, on an urgent basis for the following main prayers;

- *Interdicting the members, executive members and bargaining unit of ALAAP from participating in the work stoppage that commenced on the 26<sup>th</sup> February, 2024, arising from the demands for the resignation of the University Management and payment of medical aid and pension remittances.*
- *Interdicting the members, executive members and bargaining unit from calling upon the management of UNESWA to resign and from taking any action in furtherance of such unlawful demand.*
- *Directing the eSwatini police to maintain peace and order at the Applicant's undertaking and to ensure that the Orders of the Court are executed.*
- *Setting aside of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' recognition agreements with the Applicant.*
- *Calling upon the Respondents to show cause why the above mentioned Orders should not be made final.*
- *Prayers 1 to 6 to operate with immediate and interim effect.*

7. A brief back ground of this matter is that on or about 19 February 2024, the management of UNESWA, through the office of the Registrar, issued an internal memorandum in which it advised it's employees, members of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, that the payment of their remuneration would be delayed. Apparently this was due to shortage of funds.

8. I pause here to mention that this situation of delayed salaries at the university has been an on-going occurrence for the longest of time at this institution and one supposes that it had now reached intolerable levels for

members of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent. I mention as well that the delay in the payment of salaries directly and negatively affects the retention and turnover of personnel of any employer. Delayed salaries can shatter the pillars of loyalty and trust within any company, without exception! More often than not, the moral of the work force is always at it's lowest ebb, and feelings of being undervalued and unappreciated can creep in, and this ultimately leads to the affected employees resorting to conduct and actions which are going to register their levels of discontentment. In this present matter, the Court warns that the issue of delayed salaries at this institution of the Applicant is indeed a ticking time bomb. All stake holders should as a matter of urgency bring their heads together to work towards a lasting solution to this unfortunate issue, and promptly!

9. Now, coming to the matter at hand, after the issuance of the memo of 19 February, the 1<sup>st</sup> Respondent, responded by stating that this issue of delayed salaries would lead to their members with holding their services. Through it's Secretary General, the Applicant was warned that the actions of the University were a direct violation of their members' terms and conditions of service. There were further correspondences that were exchanged by the parties on the burning issue, and these ultimately resulted in the Respondents advising the Applicant on 23 February, that at an impromptu meeting of the affected employees, there had been a number of resolutions taken, chief amongst which was that the Lecturers would no longer be rendering their services, i.e. they would be invoking a '*no pay no work*' principle to register their discontentment. In short, the lectures and administrative staff were saying they would not be coming to work.
10. The 1<sup>st</sup> Respondent further advised the University that the impromptu meeting had also resolved that it's members would be marching to

Parliament on Monday the 26<sup>th</sup> February, to raise awareness of the plight of the University and further seek a lasting solution to the issue of the delays in the payment of their salaries. Even though confirming that they had since received their salaries for the month of February 2024, they still complained that there were still owed in respect of deductions which were apparently not remitted. These owed remittances were their medical aid, which they complained remained inactive and pension deductions.

11. It would seem like the University management decided to bury it's head on the proverbial sand because instead of addressing the concerns raised in the last memo by the 1<sup>st</sup> Respondent, they wrote their own memo advising all staff of the commencement of examinations on 26 February. This memo warned all staff members of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to honour their contractual obligations by making themselves available for work on the day the unions had earmarked for their march to Parliament.
12. On receipt of this latest memo, the unions though would not budge. By return memo, they reiterated their stance of not rendering their services until certain conditions were met. They insisted on marching to Parliament on the day slated for the start of the exams. Interestingly, Dr. M. Shongwe, the author of most, if not all the correspondences from the 1<sup>st</sup> Respondent, in his capacity as the Secretary General of the 1<sup>st</sup> Respondent, advised the Registrar of the University, Dr. S. Simelane, that their march to Parliament as Lecturers and Administrative staff would benefit the institution as a whole ultimately. He therefore advised that he was of the firm view that a postponement of the exams would be fair to both themselves, as unions of the staff, and the management itself.

13. Indeed on Monday 26 February, members of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, true to their word, did not avail themselves to work for the start of the exams. This disturbed the start of the exams resulting in the University Senate taking an urgent resolution to postpone the start of the exams to this past Monday, the 04<sup>th</sup> of March. On receipt of the memo advising of the rescheduling of the exams, the 1<sup>st</sup> Respondent, through Dr. Shongwe again, wrote another memo addressed to all the ALAAP members commending them for their resilience and their collective efforts to protect and preserve their power to collectively bargain.
14. He further informed his colleagues that '*...The weeks ahead look gloomy comrades; we need to be ready to confront the real problems facing the University and come up with long-term solutions, one of them being to compel the current Management to resign as per the extraordinary meeting resolution.*'
15. In that same memo Dr. Shongwe then recaps on what he says were resolutions that were taken at their extraordinary meeting, and gives each of these statuses a commentary. For instance, he confirms that Management of the Applicant was advised of the decision not to avail themselves for teaching and learning activities, including invigilating the exams for the current semester. He confirms as well that they had already marched to parliament. He then reiterates the decision to give Management 7 calendar days to remit all monies owed to all financial institutions which were deducted from their salaries but never remitted, failing which ALAAP members will not continue with teaching and learning activities. The deadline for this resolution was Friday the 01<sup>st</sup> March. There was also the resolution that Management of the University should resign *en masse* by close of business on Friday the 01<sup>st</sup> of March 2024, failing which they

vowed not to continue with the teaching and learning activities under this current Management. The last resolution Shongwe recaps on is on a march to the Ministry of Education and the Prime Minister's Office, on Monday 04 March, to petition Government to place the University under the administration of the Ministry of Education, immediately, until a new Management is put in place at the institution.

16. Interestingly, in closing this memo the Secretary General of ALAAP clarifies to all members of the association that they are not on strike but are merely seeking medical and mental attention while simultaneously giving the current Management time to do what he calls the '*needful*' as per their resolutions. He then advises those members of ALAAP who have received the needed medical and mental health assistance and are fit and ready for duty, to go about their duties, including assisting students prepare for exams.
17. I now come back to the idiom of there being no smoke without fire. The smoke that seems to have cajoled the University into running to this Court are the threats by the 1<sup>st</sup> Respondent that if there was no remittance of all monies deducted from their salaries by close of business on 01 March 2024, then the ALAAP members would not bother themselves in performing their primary duties of teaching at the institution. This also included the invigilation of exams. Was there a good reason for the Applicant to be worried and anxious about what was to happen on Monday the 04<sup>th</sup> March, when exams were supposed to start? Yes, the University was supposed to be worried and anxious, hence it's decision to approach the Court in the manner it did was justified. I say justified, because it would seem like the Respondents did not care about the psychological welfare and trauma the students were being forced to endure as a result of this fight these two



elephants were engaged in. Did the University unnecessarily delay in approaching this Court for redress? No it did not. Six (6) days is not an unreasonably long period within which to approach this Court in the circumstances of this case. Even though the time lines were extreme, they were extreme for everyone involved in this legal conundrum.

18. The Respondents also complained of the Registrar's authority to depose to the affidavit instituting the present proceedings. Clearly, the Respondents were shooting aimlessly and in the dark in respect of this point of law. This I say because the University Act of 1983, which establishes the office of the Registrar, specifically states at section 6 (7) (e) and (f) that the '*...the Registrar shall be responsible but not limited to signing all legal documents on behalf of the University and representing the University in all legal matters.*' Need I say more? No! Absolutely not!
19. The stoppage in rendering their services by the Lecturers of the Applicant, together with the Administrative staff was not an empty threat. The exams at the institutions were supposed to start on 26 February, but because the Respondents had visited Parliament on this day, the Management of the University had no option but to postpone the exams. Was the work stoppage lawful? No it was not. The learned Professors, Associate Professors, Doctors, Senior Lecturers, ordinary Lecturers etc, some of whom are learned in the Law, all seem to have decided that the Industrial Relations Act, 2000 (as amended), which regulates lawful work stoppage, would waste their time in getting to frustrate their employer. They seem to have wanted a here and now kind of quick solution, by 'hook or crook'. They did not care about the effects of their unlawful work stoppage.

20. As such, the Court comes to the conclusion that the Respondents have failed to justify the lawfulness of their actions. As such, one is left with no option but to draw the conclusion that the Applicant has made out a case warranting that the court intervenes immediately in these proceedings, and grant the following orders;

*(a) Members of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be and are hereby interdicted from participating in the work stoppage that commenced on 26 February 2024.*

*(b) Members of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be and are hereby interdicted from calling upon the resignation of the Management of the University, and or taking any action in furtherance of this demand without following the laid down procedure in terms of the Recognition Agreement of the parties.*

*(c) The eSwatini Royal Police be and are hereby directed and ordered to maintain peace and order the Applicant's Institution and to ensure that the orders of this Court are executed.*

*(d) The Court makes no order as to costs.*

The Members agree.

  
T.A. DLAMINI  
JUDGE – INDUSTRIAL COURT

DELIVERED AT MBABANE IN OPEN COURT ON THIS 05<sup>TH</sup> DAY OF MARCH 2024

For the Applicant: Attorney Mr. M.M. Dlamini (Dynasty Inc. Attorneys)  
For the Respondent: Attorney Mr. B. Gamedze (Musa M. Sibandze Attorneys)