IN THE INDUSTRIAL COURT OF ESWATINI

HELD AT MBABANE Case No. 44/24

In the matter between:-

THEMBINKOSI DLAMINI 1st Applicant

THE WORKER'S UNION OF SWAZILAND 2nd Applicant

TOWN COUNCIL

And

NHLANGANO TOWN COUNCIL 1st Respondent

ENOCK SILENGE N.O. 2nd Respondent

Neutral citation: Thembinkosi Dlamini and Another v Nhlangano Town Council and Another (44/2024) [2024] SZIC 26 (12 March 2024)

Coram: **DLAMINI NG'ANDU - JUDGE**
(Sitting with Ms.P.P. Dlamini and Mr.J.J. Nsibande Nominated Members of the Court)

HEARD: 04 March, 2024

DELIVERED: 12 March 2024

RULING ON THE POINT OF LAW

[1] The Applicants, Thembinkosi Dlamini (1st Applicant) and the Union of Swaziland Town Councils (2nd Applicant) have moved an application against the (1st Respondent) Nhlangano Town Council and (2nd Respondent) Enock Silenge NO. seeking the following orders;

1.1. The usual forms and service relating to the institution of proceedings be dispensed with and that the matter be heard as one of urgency.

1.2. That the Applicant non-compliance with the Honourable Court rules be and is hereby condoned.

1.3. That a *rule nisi* with interim immediate effect, do hereby issued calling upon the 1st and 2nd Respondent to show cause if any, to this Honourable Court at a time and date to be determined by the Honourable Court, why on order in the following terms should not be made final;

1.3.1. An order declaring the failure of the 2nd Respondent to issue its written ruling at the commencement of the disciplinary hearing that was held on the 22nd of February 2024 as constituting an unfair labour practice and as such it denied the Applicant rights to appeal and or to challenge same

1.3.2. An order declaring the failure of the 2nd Respondent to afford the Applicant the right to appeal ruling of the preliminary issue before proceeding with the merits of the disciplinary hearing that was held on the 22nd of February 2024 as constituting an unfair practice and as such invalid

1.3.3. An order declaring the participation of the Human Resource officer to lay charges against the Applicant on the one hand, and also to be an observer of disciplinary hearing on the other hand during the disciplinary hearing that was held on the 22nd of February 2024 as constituting an unfair labour practice and be set aside in as far as it constitutes an unfair labour practice.

1.3.4. An order declaring unlawful invalid and be set aside the recording of proceedings findings and recommendations of the 2nd Respondent that was issued on the 22nd of February 2024.

1.3.5. An order declaring the Applicant's dismissal letter that was issued by the 1st Respondent pursuant to the 2nd Respondent on the 23rd of February 2024 invalid and be set aside.

1.3.6. An order declaring the Applicant dismissal letter that was issued by the 1st Respondent pursuant to the 2nd Respondent on the 23rd of February 2024 invalid, and be set aside.

1.3.7. An order directing the 1st Respondent to accept and allow the Applicant back into his workplace for the purpose of performing his duties.

[2] That the 1st Respondent is hereby ordered and directed to commence the Applicant's disciplinary hearing proceedings *de novo* before another chairperson.

[3] That the *rule nisi* is hereby issued in terms of prayers 3.1, 3.2, 3.3, 3.4, 3.5 and 4 above operate with immediate and interim effect.

[4] Directing that the Respondent pays cost of suit in the event of unsuccessful opposition on a scale between attorney and own client.

[5] Granting the Applicant such further and or alternative relief as the above Court may deem fit.

[6] Respondents, through counsel filed their notice to oppose the application together with points of law they raised as follows;

6.1. Urgency;

That the Applicant failed to satisfy the peremptory requirements of rule 15 of the Industrial Court Rules in that he did not establish reasons why the matter is urgent nor did he state clearly why he will not be granted substantial redress at a hearing in due course and why he cannot follow Part VIII of the Industrial Relations Act of 2000 because he has already been dismissed per his own admission (ANNEXURE TD1) of the founding affidavit

6.2. Misjoinder;

The 2nd Applicant has no direct or substantial interest in the subject matter of this litigation and has been mis-joined.

6.3. Order sought Academic

As the Applicant has already been dismissed on the 23rd of February 2024, the order sought is best suited for an employee who has not been

terminated. Applicant can only come to Court after his matter has been conciliated and declared unresolved but not to seek a declaratory order.

6.4. Order seeking the setting aside of the letter of dismissal incompetent.

[7] The Court then heard the arguments on the points of law raised first before dealing with the main application and this ruling is on those points only.

Urgency

[8] Rule 15 of the rules of the **Industrial Court rules, 2007** clearly states thus,

> *"15 (1) A party that applies for urgent relief shall file an application so far as possible complies with the requirements of Rule 14*
>
> *(2) The affidavit in support of the application shall set forth **explicitly**-*
>
> *a) The circumstance and reasons which render the matter urgent.*
> *b) The reasons why the provisions of Part VIII of the Act shout be waived, and*
> *c) The reasons why the Applicant cannot be afforded substantial relief at a hearing in due course*
>
> *(3) On good course shown, the Court may direct that a matter be heard as one of urgency"*

[9] On the point of urgency the Applicant in their papers filed of record revealed to this Court that after the hearing of the 22nd of February 2024, the 1st Respondent terminated the services of the Applicant herein. See annexure TD1 filed in the Applicant's application. Further the said annexure TD1 clearly states that

"However, you have a right to appeal to the Town Clerk within five(5) working days from receipt of the letter..."

The Applicant simply decided to ignore the above directive which forms part of the internal disciplinary process but instead opted to move this application.

[10] It is worth pointing out that having been advised to appeal the decision complained of herein the Applicant would appear before a different chairperson to deal with their ground of appeal and such chairperson upon having heard the appeal would make the relevant orders upon considering all the aspects of this case including whatever remedies, the Applicant is seeking herein. If the Applicant is still not satisfied there is still available to him the provisions of **Part VIII of the Industrial Relations Act** which would subsequently bring this matter before this Court if the matter remains unresolved.

[11] Considering that the Applicant has already been dismissed from his employment it is the Court's view that the Applicant has not adduced sufficient grounds that the matter is still urgent at this stage. Under the same token there's no reasons adequately adduced indicating why therefore the Applicant cannot follow **Part VIII of the Industrial Relations Act 2000** as envisaged by **Rule 15 of the Industrial Court Rules**. Therefore on this reason of lack of urgency the matter stand to be dismissed. The certificate of urgency ought to be used in deserving matters and not merely in each and every case whereby a litigants do not want to follow the rules of Court for that would amount to abuse of process. This is for the simple reason that a certificate of urgency calls upon the Court to drop whatever other matter it may be dealing with to attend to that particular matter as one of the reasons being that the Applicant would not be afforded substantial relief at a hearing in due course.

Misjoinder;

[12] As rightly pointed by the Respondent in their argument, the union (2nd Applicant) does not have a direct and substantial interest in the application at hand other that the fact that the Applicant is their member and they were assisting him in the process. The Applicant has directly approached the Court as he can do so and having *locus standi in judico.* The 2nd Respondent was therefore wrongly joined as a party of the proceedings as their interest is only the membership of the Applicant and they stand to benefit nothing in the orders and outcome thereof sort by the Applicant. See **MEDIA WORKERS UNION OF SWAZILAND ON BEHALF OF HLENGIWE DLAMINI vs AFRICA ECHO (PTY) LTD t/a THE TIMES OF SWAZILAND SZIC CASE No. 161/2007** cited by Respondent. The point on misjoinder also succeeds accordingly.

Order sought Academic

[13] This point is intertwined with the point of urgency. The Court has already ruled that the matter is not urgent as the Applicant has already been dismissed from employment. The Court cannot also order for trial *de novo* as the Applicant has not exhausted the internal remedies such as the appeal process. This point also succeeds.

[14] Setting aside of the letter of dismissal is yet another order that this Court cannot make at this stage as a declaratory order. As a matter of facts the Applicant had even failed to disclose to the Court.

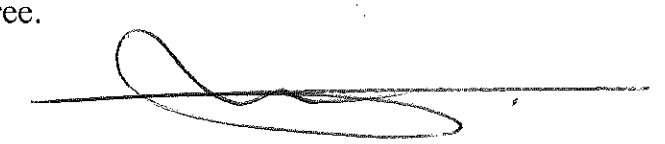
The charges he was being disciplined for but simply expected the Court to set aside his dismissal without the insight of the reasons behind his dismissal charges.

[15] Having considered all of the circumstances of this case it is the Court's view and the members agree that the *points in limine* raised have to succeed without further proceeding to the merits of the case as the Applicant has failed to show good course to have the matter enrolled on the urgency basis. The Applicant has failed to satisfy the mandatory requirements of Rule 15 (1) and (2) of the Rules of this Court. At this stage of the case, the Court is of the view that the case should follow the normal route as provided for in the Act and the rules of this Court. The Applicant is directed to exhaust all available internal remedies at his work place and if so minded, report his dispute in terms of Part VIII of the Act.

The application is dismissed

Each party is to pay their own costs

The Members Agree.



D. F. DLAMINI-NGA'NDU

JUDGE OF THE INDUSTRIAL COURT OF ESWATINI

FOR APPLICANT	:	S. Makhubu
FOR RESPONDENTS	:	S.M. Simelane