



**IN THE INDUSTRIAL COURT OF ESWATINI**

HELD AT MBABANE

Case No. 315/24

In the matter between:-

**MEDIA WORKERS UNION OF  
SWAZILAND**

1<sup>st</sup> APPLICANT

**BONISILE LUKHELE**

2<sup>nd</sup> APPLICANT

**PHUMZILE DLAMINI**

3<sup>rd</sup> APPLICANT

**GCINILE NXUMALO**

4<sup>th</sup> APPLICANT

**And**

**ESWATINI TELEVISION AUTHORITY**

1<sup>st</sup> RESPONDENT

**KWANELE Q. MAGAGULA**

2<sup>nd</sup> RESPONDENT

**MOSES T. MASILELA N.O**

3<sup>rd</sup> RESPONDENT

**HASSO MAGAGULA**

4<sup>th</sup> RESPONDENT

**Neutral citation:** Media Workers Union of Swaziland and Others v Eswatini

Television Authority and Others

(315/24) [2024] SZIC 120 (19 November 2024)

**Coram:** **DLAMINI NGA'NDU - JUDGE**

(Sitting with Ms P.P. Dlamini and Mr. J.J.Nsibande,

Nominated Members of the Court)

**Heard: 15 NOVEMBER 2024**

**Delivered: 19 NOVEMBER 2024**

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### **RULING ON POINTS IN LIMINE**

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- [1] The 1<sup>st</sup> Applicant, Media Worker's of Swaziland, is a trade Union established and registered in terms of the Industrial Relations Act 1/2000 (as amended) and a recognized representative of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicant.
- [2] The 2<sup>nd</sup> Applicant Bonisile Lukhele; 3<sup>rd</sup> Applicant Phumzile Dlamini; and 4<sup>th</sup> Applicant Gcinile Nxumalo are all employees of the 1<sup>st</sup> Respondent currently facing charges and have been called to disciplinary hearing on various dates.
- [3] The 1<sup>st</sup> Respondent is Eswatini Television Authority and the employer of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicant with its principal place of business in Mbabane.
- [4] The 2<sup>nd</sup> Respondent, Kwanele Q. Magagula; 3<sup>rd</sup> Respondent Moses T. Masilela and 4<sup>th</sup> Respondent Hasso Magagula are all Chairpersons of disciplinary hearings against, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicant respectively.
- [5] The Applicants moved an urgent application before court seeking the following orders;

1. Dispensing with the usual forms and procedures as relating to service and institution of proceeding and allowing this matter to be heard as one of urgency.
2. Condoning the Applicant's none compliance with the rules of this court.
3. That pending finalization of the application the Respondents are restrained and interdicted from proceeding with the Applicant's on going disciplinary hearing.
4. That the ruling of the 2<sup>nd</sup> , 3<sup>rd</sup> and 4<sup>th</sup> Respondents be reviewed and set aside and allow the 2<sup>nd</sup> ,3<sup>rd</sup> and 4<sup>th</sup> Applicants to be represented by the 1<sup>st</sup> Applicant's union representative Basil Tfwala (union official) of their choice.
5. Further and or alternative relief.

[6] The Respondent entered a notice to oppose the application and in the process raised the following points of law;

- a) Failure to plead exceptional circumstances warranting the court to intervene in the incomplete disciplinary proceedings.
- b) Failure to meet the requirements of **Rule 15(2) (c)**.
- c) Lack of jurisdiction to grant an order that has not been prayed for.

[7] The points of law were therefore argued before the parties could deal with merits of this case and this is the court's ruling herein;

[8] Failure to plead exceptional circumstances warranting the court to intervene in incomplete disciplinary hearing:

It was the Respondent's argument that looking at the Applicant's papers there is no where, where they indicate the existence of exceptional circumstances that would warrant this court to entertain and intervene in the on going disciplinary hearing.

[9] The Respondent referred the court to its own ruling in the case of **Kingsley Zulu vs Zweli Jele N.O, Dorphea Swanepoel N.O., Lindiwe Mdzebwe N.O and Huwel Technologies Eswatini Pty Ltd Case No 299/23** delivered on the 27<sup>th</sup> of November 2023 in which this court dealt extensively with a similar point of law. In the above case the court considered what amounts to "*exceptional circumstances*" and cited with approval the case of **Incabeta Holdings and Another vs Ellis and Another 2014 (3) SA189** where the definition of "*exceptional circumstances*" was given and pointed out further that the Industrial court generally has no power to intervene in incomplete disciplinary proceedings except where there exists "*exceptional circumstances*" warranting the court to intervene in the incomplete disciplinary hearing.

[10] In the **Kingsley Zulu** case supra this court further considered the case of **Sazikazi Mabuza vs Standard Bank and Another; Industrial case 311/2007** where it was said that;

**“Whether the court will intervene depends on the facts and circumstances of each particular case. It is not sufficient merely to find that the chairman of the disciplinary enquiry come to a wrong decision. In order to justify intervention the court must be satisfied that this is one of those rare or exceptional case where a grave injustice might result if the chairperson's decision is allowed to stand.”**

[11] This court therefore made a direct enquiring from the Applicant's representative on the issue at hand, that is to say for the Applicant what are the "*rare or exceptional circumstances*" that this court ought to consider when deciding whether to intervene in the (3) three Applicant's on going disciplinary hearing. The Applicant's representative Mr Tfwala response to this point was that,

1. In the disciplinary hearing there is an imbalance of the scales in that there were admitted attorneys acting against laymen.
2. Secondly there is a disciplinary code and procedure in terms of which the Applicants are at liberty to be represented by a union official.

He referred this court to Article 7 (1) (a) of the case as well as Article 4.1 of the collective agreement.

[12] Article 4.1 of the Parties' collective recognition agreement it states thus;

*" The employer undertakes not to interfere with the lawful and constitutional conduct of the affairs of the union. This shall include all actions taken in terms of the Industrial Relations Act of 2000."*

And Article 7(1) (a) of the case reads thus;

*" When formal disciplinary proceedings is considered necessary, the accused employee shall be issued with disciplinary charges within 10 working days of committing the offence, for the alleged offence; where he shall be informed."*

*(a) Right to representation by a union representative or a fellow colleague of his/her choice (in internal proceedings or legal representation for external proceedings, ...”*

[13] It is also worthy pointing out the said code in clause 7.4 thereof goes on to state that;

*“ Since the disciplinary hearing is still at internal level, the representation does not extend to people not working for or within the authority.”*

[14] This court I must state was at pain trying to understand what exactly were the “*rare and exceptional circumstances*” that existed in this matter. This was more so that firstly-

a) The Applicants brought to this court’s attention the decision of my sister in the similar case of **Media Workers Union of Swaziland and Ncamiso Shabangu vs Eswatini Television and Mpumelelo Mnisi case No. 214/2024** per Judge Msimango delivered on the 3<sup>rd</sup> of September 2024. In dealing with similar facts where the Applicant was making a similar prayer and the very same Mr Tfwala was representing the Applicant; wherein the court ruled that there was nothing to suggest any exceptional circumstances to warrant the court’s intervention.

Secondly;

b) In view of the provisions of 7(4) of the code which provides that;

*“Since the disciplinary hearing is still at internal level, the representation does not extend to people not working or*

*within the authority.*”

This court also still does not see any exceptional circumstance in this matter for the simple reason that other than the letter marked RIA dated 28 April 2024 appointing Mr Basil Tfwala as an Union official; the Applicants have not filed any other document to suggest that Mr Tfwala is actually working for or within the authority as suggested by Article 7 (4) of the code above.

[15] This court noted also all the rulings made by Respondent 2,3 and 4 attached by the Applicant wherein they were dealing with the issue of representation in particular by Mr Tfwala herein. The stated rulings noted that Article 7 (4) excluded the said Mr Tfwala as he was not an employee within the authority. Further and as rightly pointed by the Applicant's to, the fact that Article 7.4 should not be read in isolation to the rest of the Article but rather should be read to qualify the term “*union representation*” who are also employees of the authority or within the authority. We as a court could not agree more.

[16] It is therefore in light of the foregoing that we as a court also find that the Applicants herein failed to point this court to the existence of exceptional or rare circumstances calling upon this court to interfere in the on going disciplinary hearing. It is the court's view that this point alone quickly disposes this matter and consequently we will not even deal with the rest of the points of law raised thereof.

[17] That being the case therefore the court makes the following order;

- (i) The point of law succeeds and the application as a result is dismissed.
- (ii) Each party is to bear their own costs.

Members agree.



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**D. F. DLAMINI-NGA'NDU**

**JUDGE OF THE INDUSTRIAL COURT OF ESWATINI**

For Applicants : Mr B. Tfwala.

For Respondents : Mr B. Gamedze.