



INDUSTRIAL COURT OF APPEAL OF ESWATINI
REASONS FOR EX TEMPORE RULING

Case No.15/2020

In the matter between

**SWAZILAND UNION OF FINANCIAL
INSTITUTIONS & ALLIED WORKERS**
SANDILE MAMBA
KWANELE VILANE

1st Appellant

2nd Appellant

3rd Appellant

And

**SWAZILAND DEVELOPMENT &
SAVINGS BANK**
DUMASE NXUMALO

1st Respondent

2nd Respondent

Neutral citation Swaziland Union of Financial Institution & Allied Workers
and 2 Others vs Swaziland Development & Savings Bank and
Another (15/2020) [2021] SZICA 11 (2021)

Coram: MAZIBUKO JA, NSIBANDE JP, NKONYANE JA

Heard: 18 May 2021

Ex Tempore ruling issued 24th June 2021

Written reasons delivered 18th July 2022

Summary: (i) A bank, as employer summoned 2 (two) of its employees to a disciplinary hearing. Employees demanded to be represented by a trade union official, at the hearing, since they had joined a trade union – as members. Chairperson denied the employees – union representation.

(ii) Employees – duly assisted by trade union, filed an urgent application before the Industrial Court, seeking inter alia, an order entitling them to union representation. The bank raised points in limine challenging urgency and other procedural issues. Industrial Court upheld points in limine and dismissed the application.

(iii) Employees – assisted by the trade union appealed the ruling of the Industrial Court. At appeal hearing, counsel for the employer raised a preliminary point from the bar, that the appeal is moot or has been overtaken by events. This is because after the Appellants had appealed the decision of the Industrial Court, the bank allegedly proceeded with the disciplinary hearing of the 2nd

Appellant, viz; Mr Mamba. That disciplinary hearing has allegedly been completed.

The bank allegedly also proceeded with the disciplinary hearing of the 3rd Appellant viz. Mr Vilane. That disciplinary hearing is ongoing. Mr Vilane has asked for and was allowed legal representation at the disciplinary hearing. According to the bank, the appeal is therefore moot or academic and should be dismissed based solely on the allegations made over - bar by counsel for the bank.

Held: The preliminary point raised by counsel required evidential support. Counsel has no authority to present evidence over bar. Evidence must be presented by a witness under oath, viva voce or by affidavit. Counsel's role at the bar is to argue his client's case but not to present evidence. Evidence cannot be presented in Court in the form of heads of argument or written or oral submissions.

Held further: That the preliminary point is subject to legal and factual disputes between the parties. Industrial Court has authority to determine factual and legal disputes as Court of first instance and not the present Court.

Held further: That the appeal pertains to points in limine only and is not moot or academic. The main application before the Industrial Court has not been determined yet. The appeal should therefore proceed.

D.MAZIBUKO JA

REASON FOR EX TEMPORE RULING

BACKGROUND

1. The 1st Appellant is Swaziland Union of Financial Institutions and Allied Workers, a registered trade union recognized as such by the 1st Respondent, also referred to herein as the union.
2. The 2nd Appellant is Mr Sandile Mamba, also referred to herein as Mr Mamba.
3. The 3rd Appellant is Mr Kwanele Vilane, also referred to herein as Mr Vilane.

4. The 1st Respondent is Swaziland Development and Savings Bank, a financial institution, operating as such, with power to sue and be sued, also referred to as the bank.

5. The 2nd Respondent, Ms Dumase Nxumalo is an employee of the bank. The 2nd Respondent sat as chairperson in a disciplinary hearing in which Mr Mamba and Mr Vilane had appeared as accused employees. The 2nd Respondent will also be referred to as the chairperson.

6. About the 28th October 2020, the 3 (three) Appellants (who then were Applicants) viz, the union, Mr Mamba and Mr Vilane, moved an urgent application before the Industrial Court, in which they prayed for relief as follows:
 - “1. *That an order be and is hereby issued dispensing with the normal forms of service and time limits and hearing this matter on an urgent basis.*

 2. *That a rule nisi be and is hereby issued calling upon the Respondents to show cause why:*

- 2.1 *An order should not be issued temporarily stopping the disciplinary hearing against the 2nd Applicant scheduled for the 29th October pending finalization of the present application before the above Honourable Court.*
- 2.2 *The rule nisi issued in terms of prayer (2.1) above operates with immediate interim relief and be returnable on a date and time to be determined by the above Honourable Court.*
3. *That an order be and is hereby issued declaring that the written decision issued by the 2nd Respondent effectively denying that the 2nd and 3rd Applicants be represented by the 1st Applicant in their on-going disciplinary hearing is wrongful and unlawful.*
4. *That an order be and is hereby issued declaring that the 2nd and 3rd Applicants have a Constitutional right in terms of Section 32 (2) (a) and (b) to join the 1st Applicant and thereafter to be represented by the said union in any disciplinary proceedings in accordance with the collective agreement entered into between the 1st Applicant and the 2nd Respondent.*

5. *Costs of Application against the 1st Respondent.*

6. *Further and/or alternative relief.”*

(Record pages 5-6)

7. The bank, as 1st Respondent opposed the matter and filed what it termed; a ‘*Preliminary Answering Affidavit*’. The chairperson did not oppose the application. The bank raised points *in limine* in its affidavit which can be summarized as follows:

7.1 URGENCY

Firstly the bank argued that the application before the Industrial Court was not urgent and should not therefore be enrolled as such.

7.2 INTERVENTION BY THE INDUSTRIAL COURT IN UNCOMPLETED DISCIPLINARY HEARING.

Secondly, the bank argued that the Industrial Court has no authority to intervene in an uncompleted disciplinary hearing. The Court should allow the disciplinary hearing to run its course until completion. It is

after the completion of the disciplinary hearing that the Court has authority to intervene in the employee –grievance.

7.4 APPLICATION FOR A STAY OF A DISCIPLINARY HEARING.

Thirdly, the bank argued further that the chairperson has control over the disciplinary hearing. The Applicants should have applied before the chairperson for a stay of the disciplinary hearing (pending finalization of the main application before Court), as opposed to filing that application before the Industrial Court.

8. EX TEMPORE RULING

After hearing argument the Industrial Court delivered an Ex Tempore ruling and upheld the points raised in limine by the bank. The Industrial Court dismissed the entire application.

9. APPEAL TO THE PRESENT COURT

The Applicants were dissatisfied with the decision of the Industrial Court. The Applicants appealed to the present Court. The grounds of appeal read as follows:

- “1. *The Court a quo erred in law and in fact in holding that there were no exceptional circumstances established by the Appellants in their papers necessitating that the Court intervenes in the disciplinary hearing of the 2nd and 3rd Appellants.*
2. *The Court a quo erred in law and in fact in not holding that employer’s conduct of denying the 2nd and 3rd Appellants the right to be represented by the 1st Appellant in their on-going disciplinary hearing constituted sufficient grounds for the Court a quo to intervene and determine whether the employer’s decision was correct in the circumstances of the case.*
3. *The Court a quo erred in law and in fact in dismissing the Appellant’s application on the merits without pleadings having been closed and without heads of arguments being filed in the matter.*
4. *The Court a quo erred in law and in fact in not holding that the 2nd and 3rd Appellants were already fully paid up members of the union*

(1st Appellant) at the time of the disciplinary hearing and that as of right, the 2nd and 3rd Appellants were entitled to be represented by the 1st Appellant until their membership was set aside by a competent legal forum, namely the Conciliation, Mediation and Arbitration Commission or the Industrial Court of Eswatini.

5. *The Court a quo erred in law and in fact in holding that an application for stay of the disciplinary hearing had to be made before the Chairperson of the hearing prior to an interim urgent relief being sought from Industrial Court.*

6. *The Court a quo erred in law and in fact in holding that the abridgement of the time limits by the Appellants was unreasonable or [sic] and/or holding that the Appellants could have approached the Court on an earlier date.*

7. *The Court erred in law and fact in holding that ‘it was common between the parties that these positions (held by 2nd and 3rd Appellants) fell under “staff”.*

(Amended Notice of Appeal)

10. The appealed matter was called before this Court on the 18th May 2021.

10.1 At the commencement of the appeal- hearing the Court notified both counsel that the Industrial Court judgment is not in the record. The Court would need to study the Industrial Court judgment before it could hear argument on the appeal.

APPEAL REFERED TO AS MOOT

10.2 Counsel for the bank raised a preliminary point. According to counsel, the appeal is moot or has been overtaken by events, and should therefore be dismissed for 2 (two) reasons.

10.2.1 Counsel for the bank submitted that after the Industrial Court had delivered its Ex tempore ruling, the bank proceeded with the disciplinary hearing against Mr Mamba (2nd Appellant) and has completed that hearing.

10.2.2 According to counsel for the bank, the bank was of the view that the Appellants were not entitled to be represented by a union official at the hearing. Mr Mamba and Mr Vilane were accordingly denied union representation when their respective

hearings resumed. Counsel was not certain whether Mr Mamba was represented at the hearing and if so by whom.

10.2.3 Secondly, counsel mentioned that after the Industrial Court had delivered its ruling, the bank proceeded with the disciplinary hearing of Mr Vilane (3rd Appellant). The bank allowed Mr Vilane legal representation at the disciplinary hearing. The disciplinary hearing of Mr Vilane was on-going at the time submissions were made before the present Court.

11. Counsel for the Appellants submitted that - both Mr Mamba and Mr Vilane are entitled to be represented by a union official at the disciplinary hearing. The said Appellants insisted on exercising their contractual as well as constitutional rights to be represented by a union official since they had joined a trade union (1st Appellant) that is recognized by the bank.

11.1 The bank had also concluded a Collective Agreement with the union which entitled the said Appellants to union representation at the disciplinary hearing. The chairperson had irregularly denied Mr

Mamba and Mr Vilane their right to union representation at the hearing.

11.2 Counsel for the Appellants argued that the bank irregularly imposed its interest on the disciplinary hearing of Mr Mamba and Mr Vilane. The said Appellants were denied a chance to exercise their choice of a representative. The allegations made by counsel for the bank were challenged by counsel for the Appellants.

11.3 The appeal is meant to set aside the decision on the points *in limine* so that the Industrial Court could decide the main application.

11.4 The main application before the Industrial Court was for that Court to issue an order directing the chairperson to allow union-representation for Mr Mamba and Mr Vilane.

11.5 Consequently, the appeal is not moot and is not overtaken by events because the main application which was before the Industrial Court has not been determined.

12. Counsel for the Appellant informed the Court that the written reasons for the Industrial Court ruling had (as of that morning viz, 18th May 2021), been made available and that he had a cursory look at the document. Counsel noticed that the written reasons contained additional grounds for dismissing the application which the Industrial Court had not mentioned in the Ex Tempore ruling.

12.1 For that reason counsel for the Appellant mentioned that he would need to amend the Appellants' grounds of appeal in order to address the new issues – which he claimed – had been mentioned for the first time, in the written reasons for the Industrial Court ruling. Counsel for the Appellant mentioned also that he would need time to study the written reasons in detail.

12.2 The Court issued a directive that the written reasons be filed with the Court and a copy be served on the Respondent's counsel. The Court added that either party may file such papers as it may deem necessary in response to the written reasons. The matter was postponed to the 2nd June 2021 in order to enable the parties to study the written reasons and file the necessary papers, if so advised.

13. On the 2nd June 2021 both counsel confirmed before Court that after studying the written reasons they had nothing else to add to the submissions already made. Both counsel stated that they expected the Court to proceed, there and then, to issue a ruling on the point that the appeal was moot – which the bank had raised.
14. In response thereto, the Court mentioned that it could not have proceeded to deliberate on the ruling until there was confirmation that the parties had no further submission to add. It would have been irregular for the Court to deliberate on a ruling for the said point, while the parties had additional submissions to make. The matter was postponed to the 24th June 2021 in order to allow the Court sufficient time to deliberate on the matter.
15. **RULING ON THE PRELIMINARY POINT**

On the 24th June 2021 the Court ruled that the appeal is not moot. There were live legal issues on appeal that needed to be determined by the Court and that the Appellants are entitled to have their appeal heard. The Court postponed the matter to the 8th July 2021 for argument on the merits on appeal.

16. Initially the Court had intended to incorporate the reasons for its ruling (on the preliminary point) as a paragraph in the appeal judgment. However in the course of time it became clear that the reasons are detailed and required a separate judicial pronouncement. The reasons for the ruling are herewith presented.

17. LACK OF EVIDENCE TO SUPPORT A PRELIMINARY POINT

Firstly, the Court has observed that the preliminary point that was raised (from the bar) by counsel for the bank is not supported by evidence. The bank did not submit evidence whether *viva voce* or by affidavit, in order to support its argument that the appeal is moot or overtaken by events, as alleged. In addition to the absence of evidence, counsel did not refer to the record from the Industrial Court, in support of its preliminary point – yet this particular point required evidential support.

17.1 In particular, there is no evidence before Court to support the allegation that; as at the 18th May 2021 Mr Mamba's disciplinary hearing had been completed, and if so, what was the outcome thereof.

Every allegation of fact that counsel seeks to rely on in order to support its argument, must be introduced before Court – by a witness and not by counsel.

17.2 Any argument that counsel may submit before Court whilst at the bar, is not evidence. Evidence is invariably delivered in Court by a witness, under oath, either orally or by affidavit as required by the Court rules or procedure.

17.3 In the present matter, when counsel for bank appeared before Court to argue his client's case, he was doing so in his capacity as legal representative of his client (the bank), and not as a witness. There is a marked difference between a witness in the courtroom and counsel who is at the courtroom bar to represent a litigant.

THE ROLE OF COUNSEL AT THE BAR

17.4 The role of counsel at the courtroom bar is to persuade the Court that his clients' version (on the case that is before Court), is correct in law and in fact and should therefore be believed. Counsel relies largely on the instruction he has received from his client as material for submission.

THE ROLE OF A WITNESS IN COURT

- 17.5 The role of a witness is to tell the Court the truth, about events that are relevant to the case before Court which the witness has personal knowledge of.

PRINCIPLES REGULATING THE ADMISSION OF EVIDENCE IN COURT

- 17.6 This Court agrees with the following legal principles as stated by the learned authors regarding the manner evidence should be presented in Court, viz:

17.6.1 “At common law all witnesses must testify under oath.”

HOFFMANN LH et al: THE SOUTH AFRICAN LAW OF EVIDENCE;

4th edition, 1988, Butterworths, (ISBN 0 409 03324 3) page

440.

17.6.2 “Generally speaking, all evidence is given in the courts on oath.”

BELL WH: SOUTH AFRICAN LEGAL DICTIONARY, 2nd
edition, 1925, Juta, (ISBN not provided) page 383.

17.6.3 “Evidence means (1) statements made by witnesses in Court under a legal sanction, in relation to matters of fact under inquiry; such statements are called oral evidence.”

(Underlining added)

BELL WH: (supra) page 200.

17.6.4 “Courts of law and quasi-judicial tribunals require facts to be proved before they can be accepted and acted upon. Proof is based on evidence.”

(Underlining added)

CLASSEN C.J.: DICTIONERY OF LEGAL WORDS AND PHRASES, vol.2, Butterworths 1976 (SBN 409 01981 0) page 34.

17.6.5 “Witness [is] one who gives evidence in a cause before a court and who attests or swears to facts or gives or bears testimony under oath ...”

(Underlining added)

GIFIS S: LAW DICTIONERY, 3rd edition, Barons (ISBN 0-8120-4628-5) page 15.

17.6.6 “*AFFIDAVIT [is] a written ... statement made or taken under oath before ... a person who has been duly authorised so to act.*”

(Underlining added)

GIFIS S: (supra) page 14.

17.7 The authorities are unanimous on the principle that –

17.7.1 evidence is brought to Court only by a witness,

17.7.2 and that factual allegations must be proved before they are accepted by Court as evidence,

17.7.3 and that a witness is required to give evidence under oath,

17.7.4 and that depending on the applicable rule or procedure, a witness may give evidence *viva voce* or by affidavit.

17.8. When counsel is at the courtroom bar, he is not eligible to give evidence to the Court whether by written or oral submission or in the form of heads of argument.

17.8.1 This is because (at the bar) counsel does not appear as a witness but as a representative of a litigant. Counsel cannot therefore be cross –examined on whatever statement he makes while he is at the bar or which is contained in his heads of argument or written submission.

17.8.2 Secondly, counsel is not under oath when he presents the written or oral submission or heads of argument.

17.9 In this case, counsel for the bank was of the view that the Court should treat his argument as being factually correct. Counsel did not appreciate the fact that the preliminary point he had raised is baseless without evidential support. In addition counsel did not appreciate the distinction between; counsel at the bar and a witness in a court case.

17.10 In the course of argument this Court repeatedly alerted counsel for the bank that he is not entitled to give evidence in his written or oral submission, or in his heads of argument. In response thereto counsel submitted that a procedure has developed in other Courts - when hearing an appeal, that counsel would be allowed to give evidence

either in his heads of argument or by way of oral or written submission, of events or facts that are not mentioned in the judgment of the court a quo, and which arose after the judgment in the court a quo had been delivered.

17.11 Counsel did not produce authority in support of the alleged procedure. This Court is not aware of the alleged procedure and does not approve of it. The procedure that is suggested by counsel would, in any event, be irregular and contrary to Court practice and the rules of Court.

17.12 It was open to counsel for the bank to apply before this Court on notice – supported by affidavit, for leave to introduce new evidence and to explain the relevance of the proposed evidence to the matter before Court. This Court after hearing both sides would then decide on that application.

17.13 If a litigant were to be granted leave of Court to introduce evidence on appeal (which is not contained in the record from the Court a quo), still that evidence would have to be presented before Court by

a witness. The presiding Court would indicate whether such witness should testify *viva voce* or by affidavit.

17.14 This Court cannot dismiss the appeal before it simply because counsel for the bank says that the appeal is moot or that it is overtaken by events – without evidence supporting that allegation.

17.15 In short, there is no evidence before Court to support the allegation that; after the Appellants had filed the appeal before this Court –

17.15.1 the bank proceeded with the disciplinary hearing of Mr Mamba,

17.15.2 and that at that hearing Mr Mamba was allowed a representative of his choice, but was denied representation by a union official (which was Mr Mamba's choice of a representative),

17.15.3 and that the disciplinary hearing of Mr Mamba is complete (whatever is meant by that statement),

17.15.4 and therefore Mr Mamba's appeal is moot or overtaken by events.

17.16 The absence of evidence is fatal to the preliminary point that the bank had taken.

18. THE CASE OF MR MAMBA

The allegation by counsel that the disciplinary hearing of Mr Mamba has been completed, does not deprive Mr Mamba (and his co-Appellants) their right to prosecute this appeal. In this case even if counsel had applied, (on notice accompanied by affidavit), for leave of Court to introduce the proposed evidence (in support of the preliminary point), still the argument by the bank would have failed.

18.1 The statement by counsel for the bank; that the disciplinary hearing of Mr Mamba has proceeded and is completed, would have to be subjected to court interpretation and the legal implications thereof (especially the rights of Mr Mamba) would have to be determined.

18.2 The Court would have to establish whether the allegation made by the bank (regarding the alleged disciplinary hearing of Mr Mamba) are proved to be factually correct. In particular, there is a dispute as to

whether or not Mr Mamba was permitted a representative of his choice. There is also a dispute as to whether a valid disciplinary process was carried out by the bank. Witnesses would have to be led and cross examined in order for the presiding court to separate evidence from allegations.

18.3 The presiding court would have to establish whether or not Mr Mamba has *locus standi in judicio* to challenge the validity of the exercise which the bank allegedly carried out after Mr Mamba (and his co-Appellants), had appealed the ruling of the Industrial Court.

18.4 The Industrial Court as the court of first instance would have to hear evidence and argument on the issues raised above and make a determination. This Court hears matters on appeal and does not have jurisdiction to determine the aforementioned issues. It would be irregular for this Court to sit as a Court of first instance and determine factual disputes.

18.5 In effect the bank is saying that it has elevated itself to the position of quasi-judicial officer, and had decided the very question that the

Appellants (as Applicants) had asked the Industrial Court to decide, viz: whether or not Mr Mamba and Mr Vilane are entitled to be represented by a union official at the disciplinary hearing. The bank proceeded to decide that question in its favour. Allegedly the bank thereafter proceeded with the disciplinary hearing of Mr Mamba to completion. As a result of the alleged aforementioned exercise the bank has decided that the appeal is moot or overtaken by events. This Court is called upon to endorse that proposition.

18.6 It would appear that counsel for the bank expected this Court to dismiss the appeal (before it), on the allegation that the appeal is moot or overtaken by events, solely on the basis that counsel has said so. In any situation where a Court is called upon to make a finding of fact, it is imperative that the Court should hear the evidence and make its own assessment thereof and then make a decision. However in this case, counsel for the bank expects this Court to dismiss an appeal before it, without hearing evidence that would support the basis for the dismissal of the appeal.

19. The bank's argument is that; since it has alleged that it has completed Mr Mamba's disciplinary hearing, that allegation would mean that Mr Mamba

has no further rights in law and cannot access justice regarding the main application which has been filed at the Industrial Court. This Court cannot make that determination because it is not the Court of first instance. This is a legal question that would have to be determined by the Industrial Court.

20. The appeal on the ruling of the Industrial Court on the points taken *in limine* by the bank, would have to be the first to be determined. A decision on appeal will give the Industrial Court direction regarding its authority or otherwise to determine the main application which the Appellants (as Applicants) had presented before it. It is the ruling on the points taken *in limine* that prevents the Industrial Court from determining the main application and matters ancillary thereto.

21. If, for instance, the Appellants are successful on appeal, that decision would give the Industrial Court authority to hear the main application which the Appellants (as Applicants) had presented. The bank would be at liberty to file the necessary papers to challenge the Appellants' *locus standi* to pursue the main application. After hearing both sides, the Industrial Court would then make a determination. There is no justification in preventing Mr Mamba (and his co-Appellants) from arguing the appeal.

THE CASE OF MR VILANE

22. Another aspect of the argument by counsel for the bank was that; after the appeal had been filed, the bank resumed the disciplinary hearing of Mr Vilane and that it is ongoing. Counsel stated that Mr Vilane applied for and was permitted legal representation at the hearing.

22.1 Counsel for the bank mentioned that he did not have clear instruction regarding whether Mr Mamba was represented at the hearing and if so by whom.

22.2 According to counsel for the bank the appeal has been rendered academic because the Mr Vilane has a stronger representation when he is represented by a lawyer as opposed to a union official. The bank's allegation is not however supported by evidence.

22.3 Counsel for the Appellants denied the allegations of fact that had been presented by counsel for the bank. On the contrary, counsel for the Appellants submitted that legal representation was not Mr Vilane's choice but it was a course that was imposed on Mr Vilane by the bank. Mr Vilane has a right to be represented by a union official, alternatively his right whether or not to be represented by a union official should be determined by the Industrial Court.

- 22.4 The main issue before the Industrial Court was not about legal representation for Mr Vilane. It was about union representation for Mr Mamba and Mr Vilane.
- 22.5 Again, counsel for the bank has attempted to irregularly introduce evidence before Court- disguised as submission or heads of argument. As aforementioned, written or oral submission or heads of argument – submitted by counsel before Court, cannot qualify as evidence. This Court reiterates that counsel is not competent to give evidence while he appears at the courtroom bar to represent a litigant.
- 22.6 Counsel for the Appellants argued that the alleged exercise that the bank has carried out in respect to Mr Mamba and Mr Vilane would, in any event, be irregular since the Industrial Court has not pronounced on the main application that the Appellants (as Applicants) has filed before that Court.
- 22.7 The allegations of fact and counter – allegations regarding Mr Vilane’s disciplinary hearing and the issue of representation would

have to be decided by the Industrial Court, as the Court of first instance. The Industrial Court would require evidence to determine the issues in dispute in the same manner as the matter regarding Mr Mamba.

23. THE JURISDICTION OF THE INDUSTRIAL COURT AS COURT OF FIRST INSTANCE.

In the case of Mr Mamba and that of Mr Vilane there is a live matter to be determined by Court.

23.1 Inter alia, the Industrial Court would have to determine whether or not it was competent for the bank to make its own determination on the legal question which the Appellants (as Applicants) had filed before the Industrial Court for determination.

23.2 The aforementioned legal and factual disputes that arose between the bank and Mr Mamba as well as Mr Vilane, (after the Appellants had

appealed the ruling of the Industrial Court), may be referred to the Industrial Court for determination. The Industrial Court has jurisdiction to hear that dispute as Court of first instance and this Court does not have jurisdiction at this stage.

23.3 The appeal deals with points *in limine* only and does not address the issues raised above. The appeal is not academic since the main application which the Appellants had filed before the Industrial Court has not been determined yet.

23.4 It cannot (at this stage), be said that if the Industrial Court were to determine the aforesaid legal and factual disputes, between the parties, its decision would not affect the validity of the exercise that the bank had carried out, after the appeal on the Industrial Court ruling had been filed. This Court cannot be drawn into that speculation. The allegation by the bank that the appeal is moot is based on speculation.

24. EX TEMPORE RULING OF THE INDUSTRIAL COURT OF APPEAL

Based on the reasons as stated above the Court issued an Ex tempore ruling on the 24th June 2021 as follows:

1. The preliminary point that was raised by the bank is dismissed. There is a live matter on appeal.
2. The parties are ordered to argue the appeal.

D. MAZIBUKO

JUDGE - INDUSTRIAL COURT OF
APPEAL

I agree

S. NSIBANDE JP

I agree

N. NKONYANE JA

For Appellant:

Attorney B.S Dlamini

C/o B.S. Dlamini & Associates

For Respondent:

Attorney Z. D. Jele

C/o Robinson Bertram

