IN THE COURT OF APPEAL OF SWAZILAND

CASE NO. 11\97

In the matter between:

SWAZILAND FEDERATION OF TRADE

UNIONS Appellant

and

THE PRESIDENT OF THE INDUSTRIAL COURT

OF SWAZILAND First Respondent

THE MINISTER FOR ENTERPRISE

AND EMPLOYMENT Second Respondent

JUDGMENT

KOTZé P, BROWDE et TEBBUTT J J A

This Court was moved by the Appellant to hear this appeal as a matter of urgency. Considering it to be a matter requiring an urgent decision the Court agreed to hear it during the present (April 1997) session of the Court rather than having

the matter stand over until the next session of the Court in October of this year.

The appeal was duly heard on 7 April 1997 and the Court then made an order allowing the appeal, with costs, and granting certain further relief consequent upon the appeal having been allowed. The full text of the order appears at the conclusion of this judgment. At the same time the Court stated that it would file its reasons for judgment in due course. These are those reasons.

The appeal involves the granting of an order by the Industrial Court on l February 1997 on an ex parte application by the second respondent to whom, for convenience, we shall refer as the Minister and the dismissing by Sapire A C J in the High Court of an application for the review and setting aside of the order of the Industrial Court. It is the judgment of the learned Acting Chief Justice which the appellant sought to attack and have varied in this appeal.

These are the relevant facts. In his ex parte application which the Minister brought in terms of section 70 of the Industrial Relations Act No.1 of 1996 ("the Act") , he sought

a rule nisi calling upon the appellant, which is henceforth herein referred to as the SFTU, to show cause why the SFTU and every trade union, and its officials and members, affiliated to the SFTU should not be interdicted from "engaging in, instigating, promoting or calling for" certain strike

action, being a so-called "stay away", planned to commence on 3 February 1997 and why the said strike should not be declared to be unlawful and/or a threat to or affect the national interest.

The founding affidavit by the' Minister contained, in summary, the following relevant allegations viz. that the SFTU had on 19 January 1997 resolved to call for and implement a national "stay away", which meant a strike by all employees in the Kingdom of Swaziland; that a copy of the resolution had been sent to the Prime Minister; that it had received prominent publicity in the weekly and daily press in Swaziland; that it concerned twenty-seven demands relating to labour matters; and that all attempts to resolve the matters raised in the demands by negotiation had failed. Having regard to a similar stay-away called for by the SFTU in January 1996, the consequences of a stay-away would, in his opinion, seriously and adversely affect and threaten the national interest, as all factories, industries and businesses would be brought to a halt, public transport be dislocated, the supply of electricity and water be terminated, workers be intimidated

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and incidents of violence occur. The country's economy would be prejudiced; investor confidence be destroyed and the country's education system be negatively affected. The strike was also illegal, so the Minister averred, as the procedures in regard to a dispute laid down by the Act had not been followed.

All the aforegoing required the urgent granting of the order sought as the alleged strike was planned to commence two days later i.e. on 3 February 1997.

The application was not served on the SFTU nor was it given notice of it. The SFTU, however, heard that the application was to be made at 11.00 on Saturday, 1 February 1997 and instructed its attorney, Mr P.R. Dunseith to attend the Industrial Court and oppose the application. Mr Dunseith went to the Court and asked the Minister's counsel, Mr R. Wise SC for a copy of the application papers, explaining that he appeared on behalf of SFTU which was an interested party. Mr Wise referred the request to the Attorney-General who refused to give Mr Dunseith a copy of the papers or even allow him to look at them. Mr Dunseith, however, obtained a copy of the papers from the Registrar of the Court.

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When the matter commenced before the Court, Mr Dunseith asked for leave to oppose the application on behalf of the SFTU which had a direct and substantial interest in the application and the relief sought. He conceded that the Minister was entitled to bring the application ex parte and without notice to any interested party in terms of section 70 of the Act but submitted that as SFTU was then before the Court and was clearly an interested party, it was entitled to be heard in opposition to the relief sought against it. Counsel for the Minister opposed this. The Court refused SFTU the right to be heard ruling that section 70(1) provides only for an ex parte application by the Minister and that no other interested party has the right to be heard. The Court then granted an order in the following terms. It issued a rule nisi "with immediate effect" directed against the SFTU and its affiliates restraining and interdicting them from "engaging, instigating, promoting and/or calling for the 'stay-away'" threatened to commence on Monday 3 February 1997. The rule nisi was made returnable on 20 February 1997. The Court at the same time also made the following orders:

"We order that the said strike called by the Swaziland Federation of Trade Unions to commence on the 3rd of February 1997 is hereby declared to be unlawful and a threat to the national interest.

It is further ordered that all persons are interdicted from participating in the said strike".

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It is clear from the order that only the injunction restraining the SFTU from "engaging in, instigation, promoting or calling for" the stay-away was included in the rule nisi. The declarator was not part of that rule. On behalf of the Minister it was argued that that was the intention of the order. The wording of the order is clear however. The declarator that the strike was illegal was not subject to final determination on the return day of the rule. It was an out-and-out order made on 1 February 1997.

On Thursday 6 February 1997 the SFTU filed an application in the High Court for an order setting aside the order granted by the Industrial Court on 1 February 1997. It based its application on two grounds -

(a) that the relief sought and granted was not competent in terms of section 70 of the Act and that the Industrial Court acted ultra vires in granting such relief; and

(b) that the Industrial Court acted unfairly and irregularly in denying SFTU an opportunity to be heard, particularly where immediate interim relief was sought and that the SFTU had been seriously prejudiced by the Court's refusal to allow it to be so heard. In his supporting

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affidavit, which was jurat 5 February 1997, the second vice-president of the SFTU, Mr J. Dlamini, submitted that the matter was urgent -

"since certain interim relief has been granted against the applicant which seriously interferes with and inhibits the applicant's freedom of association and political expression".

The application came before Sapire A C J on 10 February 1997 who, in an ex tempo re judgment, dismissed the application, with costs. He did so because, although he said that the Industrial Court's refusal to hear the SFTU was a "flagrant contravention of the audi alteram partem rule" which would "probably" have caused him to exercise his powers of review and set aside the Industrial Court's order, he would not do so because the SFTU had not brought its application promptly and more importantly, it had not come to Court "with clean hands". It was, he said, continuing "presently to be engaged in promoting, supporting and maintaining the prima facie illegal stay-away" .

It is necessary to set out in extenso,) the learned Acting Chief Justice's reasons for his decision. He said -

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"Applicant's claim to a right to be heard is supported by the decision in SCHLESINGER v SCHLESINGER 1979 (4) SA 342 (W) in which it was held that, there is nothing inherently wrong or contrary to public policy in an interested party opposing an ex parte application which has come to his notice fortuitously or by informal notice: Rule of Court 6(4) (b) provides for this very contingency. On principle any person who shows a direct and substantial interest in proceedings, and whose affidavit indicates that his opposition might contribute something to a just decision of the case, should not be deprived of an opportunity of being heard. In this case there was no opportunity for the Applicant to file an affidavit but clear indication was given that applicant wished to submit pertinent argument. In other circumstances this court would probably exercise its powers of review and set aside an order granted after a refusal by the court a quo to hear a

person against whom relief was claimed, who was in attendance when the application was moved, and wished to be heard. Such a refusal by the court a quo offends our sense of fairness, and seems to be in flagrant contravention of the audi alterem partem rule, which is basic to our system of justice.

In this case however there are reasons why the court will not come to the assistance of the applicant.

Firstly, and this is not the most imoportant reason, is that the Applicant has brought this application as a matter of urgency seeking waiver of the usual requirements of the rules of court regarding notice and service of applications. The matter is alleged to be urgent "since certain interim relief has been granted against the applicant which seriously interferes and inhibits the applicant's freedom of association and political expression". It is difficult to see how an interim order interdicting a prima facie illegal strike, and restraining the Applicant from promoting it or participating therein could impinge on the Applicants freedom of association or any legitimate right of political expression it may have.

There is no explanation as to why the Applicant waited six days before presenting this application. During that period, it has ignored the order made by the Industrial Court which it

now seeks to have set aside. I take judicial knowledge of the notorious fact, that Applicant has persisted in promoting the stay away, which started on schedule on 3rd February 1997, two days after the granting of the order, and presently still continues. In these circumstances I can see no urgency in reviewing the proceedings in the Industrial Court. The Applicant will doubtless raise its legal objections on the return day of the rule. The respondent if it feels hampered by the interim order in the exercise, of its legitimate rights may anticipate the return day as it could have done almost as soon as the interim order was granted. To come to Court as a matter of urgency to have an order which is being ignored in any event set aside seems to me to be an abuse of the process of the Court and a misuse of the urgency procedures.

Because the Applicant continues presently to be engaged in promoting supporting and maintaining the prima facie illegal stay away, quite apart from it being in contempt of the existing order of the Industrial Court, it does not come to this court with clean hands.

It could be argued that a party would not be in contempt of an order made, as in the present case, without affording the affected party an opportunity to be heard, especially where such party requested a hearing and was present at the time. It would seem however that as the order remains valid until it is set aside, it may not just be ignored. The Industrial Court implicitly found that it had jurisdiction in terms of Section 5 of the Act to entertain the application before it and to make the order it made. This however is not a matter for this court to decide and if the rule is confirmed, would be a matter for adjudication by the Industrial Court of Appeal.

Whether the applicant is in contempt of the order of the Industrial Court or not, no argument was advanced to demonstrate the legality of the promotion of the stay away. Mr Simelane who appeared for the Attorney General submitted to the contrary that if the stay away is a strike as envisaged by the Industrial Relations Act there is no suggestion that the procedures therein have been observed. No strike other than one permitted by the act and embarked upon in accordance with its provisions is legal. In promoting a stay away and its continuation, the applicant, as presently

advised, appears to be committing not only a civil wrong against the proprietors of those industries, businesses and undertakings which may have been and are being adversely affected by the withdrawal of their labour forces and the stoppage of their services; in addition one or more criminal offences both at common law and in contravention of the relative Statute may well have been committed. There appears to be no counter to this argument on the papers before me. However lofty or well intentioned its motives may be, for promoting and encouraging the stay away and obviously I do not comment on this at all, the applicant does not approach this court with clean hands.

It is not a case where the Applicant may have been guilty of some unacceptable conduct in the past, which rendered its hands unclean, but from which it had purged itself by at least desisting therefrom. The illegal conduct is being persisted in even while this application was being heard."

No fault can be found with the learned judge's comments in regard to the Industrial Court's failure to observe the audi alteram partetn rule.

The audi alteram partem principle i.e. that the other party must be heard before an order can be granted against him, is one of the oldest and most universally applied principles enshrined in our law. That no man is to be judged unheard was a precept known to the Greeks, was inscribed in ancient times upon images in places where justice was administered, is enshrined in the scriptures, was asserted by an 18th century English judge to be a principle of divine justice and

traced to the events in the Garden of Eden, and has been applied in cases from 1723 to the present time (see De Smith: Judicial Review of Administrative Action p.156; Chief Constable. Pietermaritzburg v Ishini [1908] 29 NLR 338 at 341). Embraced in the principle is also the rule that an interested party against whom an order may be made must be informed of any possibly prejudicial facts or considerations that may be raised against him in order to afford him the opportunity of responding to them or defending himself against them. (See Wiechers: Administratiefreg 2nd edn. p. 237).

It is clear that the decision of the Industrial Court not to afford the SFTU or its legal representative a hearing is in blatant violation of these fundamental principles of natural justice.

That it did so may be due to a complete misconception of what an ex parte application is. A party can be brought before a Court either by way of summons or by way of notice of motion. The latter is an admonition in proper form calling upon a respondent to answer the complaint of the applicant or to comply with what he demands and to hear the judgment according to law. It is the commencement and foundation of proceedings upon which the whole case is built. (See per

Coetzee J in Simross Vintners (Pty) Ltd v Vermeulen. VRG Africa (Pty) Ltd v Walters t/a Trend Litho. Consolidated Credit Corporation (Pty) Ltd v Van der Westhuizen 1978 (1) SA 779 at 781H. In both the case of a summons or a notice of motion, service must in order to give him notice of the proceedings, be effected upon the respondent who must, in accordance with the audi alteram partem principle, be afforded every opportunity to answer the case against him. However, there are certain instances in which, in respect of a notice of motion, notice to other persons is dispensed with. These are described as ex parte applications. Herbstein and Van winsen: Civil Practice of the Superior Courts of South Africa 2nd Ed. p. 58, set out the circumstances in which this can occur. They say:

"An ex parte application is used:

(a) when the applicant is the only person who is interested in the relief which is being claimed;

(b) where the relief sought is a preliminary step in the proceedings, e.g., an application to sue by edictal citation or to attach property ad fundandam jurisdictionem;

(c) where, though other persons may be affected by the Court's order, immediate relief, even though it be temporary in nature, is essential because of the danger in delay or because notice may precipitate the very harm the applicant is trying to forestall, e.g., an application for an interdict or an arrest suspectus de fuga under the common law. . . ".

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They add, however, in regard to the latter category of cases the following:

"Where the rights of other persons are involved, notice should wherever possible be given to all such persons who might be affected".

It was having regard to the aforegoing that Coetzee J in the cases just referred to said, at p. 781 A - B:

"It seems to me therefore that an ex parte application in our practice is simply an application of which notice was as a fact not given to the person against whom some relief is claimed in his absence".

The fact that an application is brought ex parte does not exclude a respondent's right to appear and be heard. Where therefore the person against whom the relief is claimed has notice of the proceedings, the audi alteram partem principle must be applied and he must be afforded an opportunity of being heard, whether he obtains notice of the proceedings by way of service on him or by coming to hear of them in some other manner.

It is for this reason that it was held in Schlesinger v Schlesinger 1979 (4) SA 342 (W) at 347F that -

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"There is nothing inherently wrong or contrary to public policy in an interested party opposing an ex parte application which has come to his notice fortuitously or by informal notice".
That was exactly the position before the Industrial Court. Its misconception of what an ex parte application is undoubtedly led it into disregarding the principles of natural justice and giving an order which was invalid.

The Industrial Court was created for "the furtherance, securing and maintenance of good industrial relations and employment conditions in Swaziland". (See section 4(1) of the Industrial Relations Act No. 1 of 1996).

In the Botswana Court of Appeal in an unreported decision in Botswana Railways Organisation v J. Setsogo and 198 Others Civil Appeal No. 51 of 1995, delivered in June 1996, Steyn J A said this:

"The resolution of industrial disputes is a minefield in which fairness, objectivity and manifest

independence are pre-requisites for confidence and acceptance of decisions - more specifically as these impact upon emotive, volatile, indeed explosive issues. Great care must therefore be taken to ensure that ... in the

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procedures through which its deliberations are conducted, the objectivity . . . and impartiality of We subscribe completely to those views. The need for the Industrial Court to observe one of the essentials of fairness - if not the most cardinal one - and one of the most basic requirements of natural justice viz the audi alteram partem rule is therefore not only manifest but indeed imperative. It failed in casu to do so.

The first part of its order viz the interdict against the SFTU is thus invalid. Sapire A C J clearly recognised this.

For the same reason the order declaring the threatened strike "called by the Swaziland Federation of Trade Unions" unlawful was also invalid, the interested party SFTU having not been heard in regard thereto. The learned Acting Chief Justice should have recognised this as well. That, however, is not the only reason why this order was invalid. The Minister was not entitled in terms of section 70 of the Act to apply for such a declaratory order. That section only entitles him to apply for an injunction restraining the parties concerned. It reads thus:

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"70(1) If any strike or lockout is threatened or taken, whether in conformity with this Act or otherwise, and the Minister considers that the national interest is threatened or affect thereby, he may make application to the Court ex parte for an injunction restraining the parties from commencing or from continuing such action, and the Court may make such order thereon as it considers fit having regard to the national interest."

An order declaring that a strike or threatened strike is unlawful can only be brought under the provisions of section 71 of the Act and then the only person who can competently bring it is not the Minister but the Attorney-General. Section 71(1) reads as follows:

"71 (1) Notwithstanding the provisions of section 70, where the Attorney-General has reason to believe that a strike or lockout taken or threatened is not in conformity with this Act or any other law, he or she may apply to court exparte for a declaratory order to that effect."

The Attorney-General was not a party to the application before the Industrial Court. The declaratory order it made declaring the threatened strike unlawful was therefore invalid on this ground as well.

Having recognised the failure of the Industrial Court to apply the principles of natural justice in the form of the

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audi alteram partem rule as a good ground for reviewing and setting aside the Industrial Court's order, the learned Acting Chief Justice's refusal to do so for the reasons he gives, becomes not only inexplicable but also unacceptable. In fact, he fell into the same error as did the Industrial Court in choosing to exercise his discretion against the SFTU.

For the Minister it was argued before us that judicial review is a discretionary remedy and that a

court is entitled to refuse an application for review notwithstanding its possible merits, in thy exercise of that discretion. Counsel cited inter alia, Wade; Administrative Law 6th ed. at 535-6 where with reference to a refusal to grant a discretionary remedy, the learned author said:

"From time to time the Court: will do so for some special reason, even though there has been a clear violation of natural justice".

with the utmost respect to the learned author, that proposition cannot he correct. A clear violation of natural justice will, in every instance, vitiate an order and no room for judicial discretion as to whether to set it aside can, in such instances, exist.

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Baxter: Administrative Law at 540 puts the position clearly. The learned author says thus:

"The principles of natural justice are considered to be so important that they are enforced by the Courts as a matter of policy, irrespective of the merits of the particular case in question. Being-fundamental principles of good administration their enforcement serves as a lesson for future administrative action. But more than that, and whatever the merits of any particular case, it is a denial of justice in itself for natural justice to be ignored. The policy of the Courts was crisply stated by Lord Wright in 1943 -

'If the principles of natural justice are violated in respect of any decision, it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision".

(See General Medical Council v Spackman, [1943] AC 627, 644-5).

The learned judge a quo refused the SFTU relief on two grounds:

(i) its not having brought its application before him with sufficient urgency; and

(ii) its having come to Court "without clean hands".

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As to the first of these reasons, the learned judge made a factual error which is germane to his finding as to the urgency of the application before him. He said "there is no explanation as' to why the applicant waited six days before presenting this application". In stating this, the learned judge was palpably wrong. The application before the Industrial Court was made on Saturday 1 February 1997. There is no evidence that SFTU became aware of the Industrial Court's order until Monday, 3 February 1997 when the order was published in the "Times" newspaper and the Government Gazette or that it was served on SFTU before then. It did not have to be. Section 70(3) of the Act provides that the order must be published in the Gazette and in a newspaper circulating in Swaziland and that this will be deemed to be service of it. That the SFTU immediately sought to have the order set aside is evidenced by the fact that Mr Dlamini's affidavit was signed on Wednesday 5 February 1997 i.e. two days after the order was published and the SFTU's application filed a day later on Thursday 6 February 1997 and served on the respondents on the same day. The SFTU therefore brought its application within three days of service of the order which is, of course, perfectly reasonable, and did not wait six days before doing so, as stated by the learned judge a quo.
His finding that:

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"J can see no urgency in reviewing the proceedings of the Industrial Court" was accordingly based on entirely incorrect facts.

As to the second of his reasons, the learned judge based his finding that the SFTU had not come to Court with clean hands largely on the following ground:

"J take judicial knowledge of the notorious fact that applicant has persisted in promoting the stay-away".

It is here with respect to him, that the learned judge has fallen into the same error as the Industrial Court. While the fact of the stay-away may have been notorious, he has made the positive finding that SFTU "has persisted in promoting the stav-away" (emphasis added) without affording it a hearing in regard thereto, and therefore in obvious violation of the audi alteram partem rule.

It has frequently been stressed in the South African courts and by writers on the law of evidence in England and America,

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that the doctrine of judicial knowledge must be confined within very narrow limits. In R v Tager 1944 AD 339 at 343, an authority that has been approved and applied in numerous cases since then, Watermeyer CJ said:

"The doctrine of judicial notice is, by all the authorities on the law of evidence which I have consulted . . . still to-day rightly confined within very narrow limits. Thus Phipson says that Judges and juries can only take notice of matters 'so notoriously or clearly established that evidence of their existence is unnecessary . . . Although, however, Judges and juries may, in arriving at decisions, use their general information and that knowledge of the common affairs of life which men of ordinary intelligence possess ... they may not ... act on their own private knowledge or belief regarding the facts of the particular case.... Wigmore in sec. 2569 (a) draws the same distinction: 'It is therefore plainly accepted that the Judge is not to use on the Bench, under the guise of judicial knowledge, that which he knows as an individual observer. The former is in truth 'known' to him merely in the peculiar sense that it is known and notorious to all men, and the dilemma is only the result of using the term knowledge in two senses. Where to draw the line between knowledge by notoriety and knowledge by personal observation may sometimes be difficult, but the principle is plain. '"

In the present instance the learned judge a quo appears to be importing as judicial knowledge, his own private beliefs as an individual observer. He cites no facts nor provides any evidence from which it can be said to be so clearly established that the SFTU was "promoting" the stay-away that he could take judicial notice of it.

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The learned judge also stated that no argument was advanced "to demonstrate the legality of the promotion of the stay-away". (again emphasis added).

While this may have been so, the SFTU was given no opportunity to place any facts before either the Industrial Court or the Court a quo upon which any such argument could be founded. The learned judge indeed went further to find that the strike was illegal. This was based on the ex

parte averment by the Minister that the procedures laid down by the Act had not been followed. It must once again be repeated that the SFTU was given no opportunity to respond thereto and the learned judge's finding once again is made in clear violation of the audi alteram partem rule. So, too, is his finding that the SFTU appeared to be committing not only a civil wrong against members of the community but also possibly criminal offences. These findings were not based on any facts or evidence before him and were made purely on the premise that the SFTU is "persisting in promoting" an illegal strike in regard to which there is, firstly, no factual evidence and, secondly, in regard to which the SFTU was afforded no opportunity to respond. The findings are not only therefore gratuitous and far-reaching but also of a most serious and damaging import and made, as they are, in disregard of the audi alteram partem rule, are both

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inappropriate and unjustifiable. The Court's finding that the SFTU had not approached the Court with "clean hands" is accordingly also unwarranted.

Moreover, the question of "clean hands" should be used in special circumstances only (see Performing Arts Council v Paper. Printing, Wood & Allied Workers Union 1994 (2) SA 204 (A) at 218).

While the doctrine of "clean hands" may apply to situations in which relief is sought which is discretionary in nature as far as the judicial officer is concerned it cannot be applied when the discretion of the Court is excluded such as the position in casu where the appellant was entitled to an order, based as it was on a failure to afford it the right to be heard. In our law as stated above the entitlement to a hearing is invariable and inviolable. A request to review a failure of it does not depend on the discretion of the Court and the doctrine of clean hands, therefore, is inappropriate and inapplicable.

It follows that the further finding of the Court a quo that it could not review and set aside the order of the Industrial Court, (despite it having been given in flagrant

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contravention of the audi alteram partem rule and thus being invalid) because SFTU had not approached the Court with clean hands, cannot stand.

The learned judge a quo also found that -

"To come to Court as a matter of urgency to have an order which is being ignored in any event set aside seems to me to be an abuse of the process of the Court and a misuse of the urgency procedures".

In the light of all the aforegoing that finding is without foundation and is unwarranted and unjustified. In any event, an application to set aside an invalid order which is in violation of one's rights would seem to us per se a matter of urgency and one eminently demanding urgent relief.

It was for all the above reasons that the Court made the order it did on 7 April 1997.

The Court would add one further comment. The appellant was, as the most interested party in the ex parte proceedings in the Industrial Court, clearly entitled to know what relief

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was being sought against it and what the case against it was upon which the application for such relief was founded.

The conduct of the Attorney-General in refusing to make available to the appellant a copy of the papers in the application or even allowing its legal representative to see them was therefore not only highly irregular but an improper and flagrant disregard of the principles of natural justice. It was conduct which ill-becomes an officer of this Court concerned with the proper administration of justice and whose function and duty it is to uphold the principles of justice and is deserving of censure. This Court expresses, in the strongest terms, its disapproval of the Attorney-General's actions.

It was because of those actions and the failure of the Industrial Court to apply the audi alteram partem rule that Mr Kuny, for the SFTU, invited us to award his client its costs on the attorney - and - client scale. We declined to do so for these reasons:

(a) The Attorney-General was not a party to the appeal;

(b) No costs were sought against the Industrial Court, a fact confirmed by Mr Kuny;

(c) The Minister was not responsible for the Attorney-General's action nor for the failure of the Industrial Court to afford the SFTU a hearing.

The Court accordingly made the following order:

1. The appeal succeeds, with costs;

2. The order of Sapire A C J dismissing the appellant's application in the High Court for an order setting aside the order of the Industrial Court, is set aside and there is substituted therefor the following order:

"The order of the Industrial Court granted on 1 February 1997 in the ex parte application of the Minister of Enterprise and Employment is declared invalid and is set aside, with costs".

G. P. C. KOTZé P J BROWDE J A P.H. TEBBUTT J A