

IN THE HIGH COURT OF SWAZILAND

Civil Case No. 2792/2006

JAN SITHOLE N.O.	1st Applicant
MARIO MASUKU	2nd Applicant
PEOPLES' UNITED DEMOCRATIC MOVEMENT	3rd Applicant
DOMINIC TEMBE	4th Applicant
NGWANE NATIONAL LIBERATORY CONGRESS	5th Applicant
SWAZILAND FEDERATION OF TRADE UNIONS	6th Applicant
SWAZILAND FEDERATION OF LABOUR	7th Applicant
SWAZILAND NATIONAL ASSOCIATION OF TEACHERS	8th Applicant

And

THE PRIME MINISTER	1st Respondent
SWAZILAND GOVERNMENT	2nd Respondent
MINISTER OF JUSTICE & CONSTITUTIONAL AFFIARS	3rd Respondent
THE ATTORNEY GENERAL	4th Respondent
CHAIRMAN CONSTITUTIONAL DRAFTING COMMITTEE	5th Respondent
SPEAKER OF THE HOUSE OF ASSEMBLY	6th Respondent
PRESIDENT OF SENATE	7th Respondent
MINISTER OF HOUSING & URBAN GOVERNMENT	8th Respondent

Coram: **S.B. MAPHALALA-J**
 R. A. BANDA - CJ
 M. D. MAMBA – J

For the Applicants: **MR. T. MASEKO**

For the Respondents: MR. M. VILAKATI

RULING (On application to amend)

Maphalala J:

[1] The Applicant has filed a Notice to amend the Notice of Motion in terms of Rule 28 (8) of the Rules of Court. The pertinent Rule of the court reads as follows:

28. (8) The court may during the hearing at any stage before judgment grant leave to amend any pleading or document on such terms as to costs otherwise as to it seems fit.

[2] The application seeks to amend the Applicant's Notice of Motion dated 3rd August 2006 by deleting paragraphs 3.1.3 and 3.1.4 and substituting in place thereof the following

4. Reviewing and setting aside, and if necessary, correcting the findings of the CRC which are set out in annexure "A" of the Notice of Motion;

5. Suspending and setting aside the Constitution of Swaziland Act No. 001 of 2005 for a period of two years, and referring it to a broadly representative institution to correct its sections which do not give effect to the 2nd Respondent's obligations under the African Charter and the NEPAD declaration as well as under international human rights and international customary law".

[3] The Notice further states that the above is sought so that the Notice of Motion is in line with the averments in paragraphs 106 to 116 of the Founding affidavit particularly paragraph 108 thereof.

[4] The Respondents vigorously oppose the granting of this amendment contending mainly that Rule 28 (8) of the Rules of this court is different from the corresponding Rule of court in South Africa where a similar application as the present application may be entertained. Furthermore that the amendment being sought by Applicant will cause prejudice to the Respondents in that a

new prayer 5 has been created. The Respondents therefore state that this application for amendment is a frivolous application and should be dismissed with costs.

[5] In our assessment of the arguments of the parties regarding this application for amendment we have come to the considered view that due to the breadth and depth of the questions in this application we ought to grant the application for amendment by the Applicants. The application sought is in line with the averments in paragraph 106 to 116 of the founding affidavit particularly paragraph 108 thereof. We have also come to the considered view that the parties ought to furnish arguments before court brought about by this amendment. On the question of costs we are of the view that the costs of this application be costs in the course, and so it is ordered.

Pronounced at the High Court sitting at Mbabane on the 12th day of September 2007.

S.B. MAPHALALA-J

I agree

R. A. BANDA – CJ

I also agree

M. D. MAMBA – J