

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 122/08

In the matter between:

**SNAT SAVINGS AND CREDIT
COOPERATIVE SOCIETY LIMITED**

APPLICANT

v

PAUL NKABINDZE

APPLICANT

RESPONDENT

In re:

PAUL NKABINDZE

v

**SNAT SAVINGS AND CREDIT COOPERATIVE SOCIETY
LIMITED**

CORAM

:

Q.M. MABUZA -J

FOR APPLICANT

:

MR. S.C. DLAMINI OF S.C.

D LAM INI COMPANY

FOR RESPONDENT

:

MR. M. MKHWANAZI OF

MKHWANAZI ATTORNEYS

JUDGMENT 24/11/09

[1] In this application the following order is sought:

- a) **Directing the respondent to forthwith release to the applicant the loan amount of E37,000.00;**

b) **ndent to pay the applicant his end of year dividends for Direc 2007;**

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the d) **Costs;**

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t to e) **Further and/or alternative relief.**

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d [2] The application is opposed. The Respondent raised
appli a point ***in limine*** to the effect that the matter was
cant prematurely before Court as the Applicant had not
the exhausted all internal dispute resolution structures
amou and has failed to comply with the dispute resolution
nt of mechanisms provided in the Co-operatives Act, 2003.
the

instal

ment [3] This point ***in limine*** is ill-conceived because in
s certain and appropriate cases where there has been
paid an abuse in the exercise of power by the other party
so in this case the Respondent, section 33 (1) of the
far Constitution entitles the Applicant to approach the
with Court directly for relief. Section 33 (1) of the
accru Constitution states:

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inter

est; **"A person appearing before any administrative authority has a right to be heard and to be treated justly and fairly in accordance with the requirements imposed by law including the requirements of fundamental justice or fairness and has the right to apply to a court of law in respect of any decision against that person with which that person is aggrieved."**

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respo

[4] The Applicant has already exhausted the internal dispute resolution structures and they were of no assistance. It would be folly for me to send him back into the jaws of the crocodile as this would

s ent the point of law is dismissed. I turn now to
e the merits of the case.

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{5] The background hereto is that the Applicant who is
e teacher by profession is a member of the
teacher's organisation Swaziland National
n Association of Teachers (SNAT). The Respondent
o is a co-operative society operated by SNAT for its
members who are teachers. The Respondent is
u formally registered in terms of the Cooperatives
s Act, 2003.

e

{6] The Applicant as a teacher is a member of the
u Respondent and this membership entitles him to
l make money loans from the Respondent. During
2007 he made an application for a loan from the
p Respondent for an amount of E37,000.00 (Thirty
u seven thousand Emalangeni).

{7] The Applicant states that the loan was approved
p by the Respondents Credit Committee. During
o July 2007 the Applicant received a telephone call
s from a staff member of the Respondent to collect
e the cheque. However, Absalom Shabangu who is
. a member of the Executive Committee of the
Respondent telephoned the Applicant and
l informed him not to collect the cheque as the
n loan had not been approved.

{8] In his answering affidavit on behalf of the
h Respondent, Wilton Dlamini, chairman of the
e Respondent denies that the Applicant's loan was
approved. The reasons given for the non-
e approval is that the Applicant had a prior loan
v which was in arrears which he needed to clear off

b Dlamini denies that a staff member telephoned
e the Applicant particularly as the Applicant has
f failed to state who telephoned him. In an earlier
o application for rescission of judgment filed by the
r Respondent and in its replying affidavit at
e paragraph 10.1, the deponent, Mr. Dlamini
admits that the loan was approved but that the
r Management Committee declined to confirm the
e approval of the loan because the Applicant
c (Respondent then) had outstanding loans from
e previous years.

i[9] Furthermore, a minuted meeting held on the 19th
v December 2007 of the Supervisory Committee
i found that the loan application had been
n approved (see annexure "RA1" and "RA2". The
g Applicant also attended this meeting.

¶10] Ultimately, the Applicant was called to a meeting
n before the Supervisory Committee. The
o Executive Committee was also called. It was at
t this meeting that the Applicant learnt that he
h had been black listed by the Executive
e Committee for allegedly failing to repay the
r earlier loan. The Applicant states that he was
surprised as he could not be lawfully blacklisted
l without a hearing first being held. At the meeting
o he denied that he was owing the Respondent
a and requested proof; no proof was forthcoming.
n He denies being indebted to the Respondent in
. any amount at all.

¶11] The Respondent did not respond to the Applicants
r allegations. All it did was merely note the
. contents herein (see paragraph 11 of its

a e is disallowed in pleadings and amounts to an
n admission of the things stated by the Applicant.

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¶12] Consequently, I find that the Respondent have
e not set out a defence to this allegation by the
r Applicant and I must accept the Applicant's
i version of events. The Respondents have failed
n to set out a counter-claim in respect of the
g money they say is owing. It may very well be
owing but I suspect that they cannot properly
a document it. This is not the Applicant's fault.
f Furthermore, the Respondents have a claim in
f law and can issue summons once they have
i established proof of such outstanding loan.

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¶13] The Applicant has stated that even though the
v application for the loan was not approved, the
i Respondent started deducting repayment
t instalments from his salary with effect from the
) end of August, 2007 in respect of the loan for
. E37,000.00 which was not released to him. He
has annexed his payslip (annexure "RA4") which
T shows a deduction of the sum of E2,300.00 in
h favour of the Respondent (see item 052). The
i year to date column shows a total deduction of
s E1 1,500.00 for the past eleven months.
Annexure "RA4" is dated 21/11/2008.

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¶14] The Respondents reply to the above allegation is
s that the Applicant at the time he made the
p application knew that he was indebted to the
o Respondent. The Respondent has once more
n failed to set out the extent of the Applicant's
s indebtedness. The impression made on me is

t not the Applicant is indebted and to what
h extent.

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[15] The Respondents response to the allegation of
deduction of money from the Applicant's salary
t is that the deductions are in respect of the
h outstanding loans. Hereto there is a marked
e failure by the Respondent to respond properly to
y the Applicants averments.

[16] The Applicants next bone of contention is that
a the Respondent further withheld his end of the
v year dividends for 2007 on the basis that he was
e indebted to it. The Applicant has stated that he
is entitled to the dividends as a contributing
n member of the Respondent as he is up to date
o with his contributions. Annexure "RA4" item 058
i shows a deduction of E77.39 being SNAT
d subscription. Year to date column shows that a
e total E386.95 in the past eleven months had
a been deducted. Annexure "RA4" is dated
21/11/2008. The Respondents response hereto is
a cryptic statement that dividends are ordinarily
w paid out to members whose accounts are not in
h arrears not members in the position of the
e Applicant.

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[17] Here too, the Respondent has failed to address
e the issue. It has not responded to why it has not
r paid the Applicants his dividends. If it used the
dividend to set off what is owed by the Applicant
o it should demonstrate this by setting out the
r amount owing, the amount of the dividend due
to the Applicant and the balance after setoff. The

A pplicant is entitled to this information.

[18] The Applicant has stated that the loan was made in order for him to repair his trucks. As a result of the refusal of the application, the Applicant had suffered substantial damages because of the loss of the use of the trucks. The Respondents response is not a defence but an arrogant response namely that the Applicant should not expect to get a loan irregularly just to fix his truck and make money when he has shown that he is failing to repay his previous loans.

[19] Finally, the Respondent at paragraph 18 of its answering affidavit states that the Applicant should have involved the internal dispute resolution mechanisms if he was dissatisfied with the decision of the Supervisory Committee. I have already dealt with this response when dealing with the point *in limine* above.

[20] It is clear to me that the Respondent:

- (a) Took a unilateral decision to blacklist the Applicant without first calling him to a hearing. In **MPD Marketing and Supplies (Pty) Ltd and 3 Others v The Prime Minister of Swaziland and 7 Others** case no. 1705/06 (unreported). This Court held that the Prime Minister and his Cabinet had no right to blacklist the Applicants without hearing their side of the matter. See also section 33 (1) of

the o produce proof of the outstanding prior
Co loan yet continue to deduct money from his
nst salary is
itu an abuse of power.

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n (c) By withholding his dividend to his financial
of detriment

Sw was not only punitive but abuse of power.

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[21] I have in the past stated that it is a requirement

d. of the rule of law that the exercise of power by
public functionaries should not be arbitrary

(b) otherwise the courts will declare such exercise

B invalid.

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[22] In the event the Respondent is ordered to:

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(a) Release the amount of E37,000.00 to the
i Applicant.

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(b) Refund to the Applicant the amounts of the

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instalments deducted from his salary together

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with accrued interest;

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(c) Pay to the Applicant his end of the year
dividends for 2007;

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(d) Costs;

(e) Further and or alternative relief.

J.M. MABUZA