IN THE HIGH COURT OF ESWATINI

Held at Mbabane Case No. 614/23

In the matter between:

SUFIAW (SWAZILAND UNION OF FINANCIAL

INSTITUTION AND ALLIED WORKERS **1ST APPLICANT**

IRENE NXUMALO **2ND APPLICANT**

AND

ESWATINI ROYAL INSURANCE

CORPORATION **1ST RESPONDENT**

THE PRESIDING JUDGE OF THE

INDUSTRIAL COURT **2ND RESPONDENT**

NOMINATED MEMBERS **3RD RESPONDENT**

THE ATTORNEY GENERAL **4TH RESPONDENT**

THE REGISTRAR OF THE

INDUSTRIAL COURT **5TH RESPONDENT**

SIFISO MASEKO **6TH RESPONDENT**

CAROL MUIR **7TH RESPONDENT**

Neutral citation: *Swaziland Union of Financial Institutions and Allied Workers vs Eswatini Royal Insurance Corporation & 6 Others (614/23) [2023] SZHC 146 (14 June 2023)*

Coram: FAKUDZE, J

Heard: 4 April, 2023

Delivered: 15 June, 2023

JUDGMENT

INTRODUCTION

[1] Pending before court is a review application of a decision by the Industrial Court on the 24th February, 2023. An urgent application was lodged at the Industrial Court seeking to interdict the Respondents from proceeding with a hearing that was scheduled for the 25th January, 2023. The Applicants sought to review and set aside the appointment of the 6th Respondent from further participation in the disciplinary hearing. On the 24th February, 2023, the court *a quo* dismissed the application on the basis that there was nothing to arouse a reasonable apprehension of bias on the part of the 6th Respondent.

Parties' contention

Applicants

[2] Following the dismissal by the Industrial Court, the Applicants filed the present review application challenging the finding of the court. The bone of

contention is clause 3.1.10 of the Collective Agreement between Swaziland Royal Insurance Corporation (SRIC) and Swaziland Union of Financial Institution and Allied Workers (SUFIAW) which provides as follows:

> *"3.1.10. If the matter requires a full hearing, the Human Resource Manager shall appoint an in-house committee which shall consist of the Legal Department to prosecute the employee and a chairman to preside over the matter."*

[3] The Applicants contend that the Industrial Court failed to follow the processes laid down in the Collective Agreement and proceeded to appoint a chairperson without consulting the Applicant as stipulated in the Agreement.

[4] The appointment of the chairperson to preside over the 1st Respondent's disciplinary hearing was a clear violation of Clause 3.1.10 of the Collective Agreement. The court *a quo* failed to have taken this into account and thus arrived at a wrong and prejudicial decision.

The Respondents

[5] The Respondents state that there are no reviewable irregularities set out and established in the Founding Affidavit. In every application for review, the Applicants must plead and establish through facts reviewable irregularities as demonstrated in **Takhona Dlamini v President of the Industrial Court of Swaziland**.

[6] In the present review, the Applicant is unhappy with the result or outcome of the judgment of the court under review. They ought to have noted an appeal to the Industrial Court of Appeal. In review proceedings, the Applicants must challenge the decision making process, method used or the

procedure that was followed and not the correctness of the judgment itself. In this case, the Applicants are challenging the correctness or otherwise of the judgment and not the method used in arriving at the judgment.

[7] The proper and correct forum for hearing and determining of the Applicants' complaint is the Industrial Court of Appeal through appeal procedure and not review.

Court's analysis and conclusion

[8] It is the court's considered view that the Applicants are seeking to review a matter that is meant for an appeal. The substance of the review application before me is captured in paragraphs [20] and [21] of the Industrial Court Ruling as follows:

> *"[20] The Applicants argued that they have no alternative remedy available against the 1st Respondent, as the Respondent had deviated from its own Disciplinary Code in particular Clause 3.1.10. It was the Applicant's argument that in terms of clause 3.1.10, the matter required a full hearing, and that as a result thereof an in house committee should have been appointed to sit during the hearing. It was the Applicant's further submission during argument that the 1st Respondent had deviated from the provisions of clause 3.1.10 without the consent of the Applicants.*
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> *"[21] As a result of this deviation by the 1st Respondent, the 2nd Respondent should not have been appointed to preside over the disciplinary hearing as he is an external party. Therefore it was the Applicants submission that there is an illegality in the appointment of the 2nd Respondent……."*

[9] If the Applicants are convinced that the 1st Respondent failed to correctly interpret the Disciplinary Code or that the code was incorrectly applied, the available route is to appeal the decision of the Industrial Court. I fully agree with the Respondents that what the Applicants are doing is to challenge the correctness of the decision or outcome of the Industrial Court. There is no irregularity that should be reviewed.

[10] Taking into account all what has been said above, the Application is dismissed with costs at an ordinary scale.

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FAKUDZE J.

JUDGE OF THE HIGH COURT

Applicant: Mr. Ndlangamandla

Respondent: Mr S.M. Simelane