

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 257/99

In the matter between:

SWAZILAND NATIONAL ASSOCIATION

OF TEACHERS (SNAT)

1ST APPLICANT

SWAZILAND NATIONAL ASSOCIATION

OF CIVIL SERVANTS (SNACS)

2ND APPLICANT

SWAZILAND NURSING ASSOCIATION (SNA)

3RD APPLICANT

and

SWAZILAND GOVERNMENT

1ST RESPONDENT

HELEN FUTHI KUHLASE

2ND RESPONDENT

RULING

13.12.2000

The Applicants have brought an urgent Application seeking the court to grant an order in the following terms:

1. Reinstating the matter under Case No. 257/99 and directing that it be heard as one of urgency.
2. Holding the Respondent's conduct in declaring overtime allowances in terms of the Government Circular dated 17th November, 2000 to be in breach of the settlement agreement in Case No. 257/99 dated the 8th November, 1999 and restraining it from proceeding with the payment.
3. Holding the First respondent in contempt of the order of the court of 8th November, 1999 in case No. 257/99.
4. Directing the Respondents to resume the joint negotiations with the Applicants by a date to be determined by the court to proceed with such negotiations to finality and expeditiously.

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5. Further and/or alternative relief.

The Respondents have filed an Answering Affidavit and raised preliminary objections that can be summarised as follows:

1. The armed forces are excluded from the provisions of the Industrial Relations Act No.1 of 2000.
2. The matter is not urgent and should not be heard on such basis.

As concerns prayer 2 in the Notice of Motion; in terms of annexure MPSD4 to the Application, a memorandum by the Principal. Secretary - Ministry of Public Service and Information to the Accountant General dated the 17th November, 2000, it is manifestly clear that the special overtime award is to be given to the armed forces, the Royal Swaziland Police, the Umbutfo Swaziland Defence Force and the

Correctional Services.

Section 3 of the Industrial Relations Act, 2000 reads as follows:

"This Act shall apply to employment by or under the Government in the same way and to the same extent as if the Government were a private person but shall not apply to:

(a) any person serving the Umbutfo Swaziland Defence force established by the Umbutfo Defence Force Order, 1977;

(b) The Royal Swaziland Police Force; and

© His Majesty's Correctional Services established by Prison Act No. 40 of 1964.

Similarly, Section 5 of the Employment Act, No. 5 of 1980 reads:

"subject to Section 6, the provisions of this Act shall apply to employment with, by, or under the Government other than to employment in the Royal Swaziland Police Force, the Umbutfo Swaziland Defence Force and the Swaziland Prison Service".

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Taking the aforesaid provisions into consideration, the Applicants have no locus standi to bring this Notice of Motion and the same is a nullity. After all, in terms of the Recognition Agreement of the 2nd Applicant the members of the armed forces fall outside the Applicant's bargaining unit.

Furthermore, the Industrial Court has exclusive jurisdiction to entertain matters concerning employers, employees and organisations that fall under the ambit of the Industrial Relations Act and no more.

Since the Armed Forces are specifically excluded from the operation of the Industrial Relations Act and the Employment Act, we have no jurisdiction to entertain this matter.

The Application is clearly ill conceived. The same is vexatious, frivolous and has been brought in bad faith.

The Application constitutes a blatant abuse of the process of this court by organisations who without doubt are very familiar with the provisions of both the Industrial Relations Act 2000 and the Employment Act No. 5 of 1980.

As concerns prayers 3 and 4 the Applicants have failed to establish that they have a prima facie right to the orders sought.

From the papers filed of record, there has been substantial compliance with the order of the court.

Negotiations on the benefits and allowances have been substantially proceeded on pending the arbitration exercise on the issue of the salary which was finalised on the 27th November, 2000.

Looking at the correspondence subsequent thereto dated the 4th and 6th December, we can safely state that there has been no deliberate delay on the part of the Respondent to convene a meeting for the purpose of continuing deliberations on the benefits and allowances applicable to the Applicant's members and members of the bargaining unit.

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The Application is dismissed. The court will register its disapproval of the conduct by the Applicants by awarding costs on the scale as between Attorney and own client.

The Members Agree.

NDERI NDUMA

PRESIDENT - INDUSTRIAL COURT