

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 98/04

In the matter between:

STEPHEN DLAMIN Applicant

And

ACCOUNTANT GENERAL 1st Respondent

PRINCIPAL SECRETARY – MINISTRY

OF EDUCATION

ATTORNEY GENERAL 2nd Respondent

CORAM:

N. NKONYANE : ACTING JUDGE

D. MANGO : MEMBER

G. NDZINISA : MEMBER

M. MKHWANAZI : FOR APPLICANT

N. MATSEBULA : FOR RESPONDENTS

RULING- 09/06/04

This matter was brought to court on the 29th April 2004 on a certificate of urgency. On that day it was postponed until 5th May 2004 for arguments on the

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points of law raised by the Respondents' attorney. On the 5th May 2004 it was again postponed by consent until the 18th May 2004. On that day the points raised in limine were finally addressed.

The Respondents' attorney pointed out that she was no longer going to pursue the first point raised in limine, being *res judicata*. She said she was only going to address the court on the remaining two points being, urgency and jurisdiction. The facts of the matter are that the Applicant was once employed by the Ministry of Education as an Accounts Officer. He was based at the Headquarters in Mbabane. On the 8th February 1999 he was suspended from duty without pay on account of his being charged with fraud. The charges were however withdrawn on the 8th March 1999. He however remained on suspension without pay. The charges were re-instated in August 1999. The trial however never took off. In January 2000 he was advised to stop coming to court as the court record in his case had gone missing. The charges are still pending. He says that the matter is urgent because he has not received his salary since February 1999. He says he has no other remedy except to come to this court.

These facts clearly present a grim picture of the Applicant's circumstances. Even though that may be so, the court still has to dispassionately address the question of whether urgency has been established in this case.

During the arguments it transpired that the Applicant once took the matter to the High Court in the year 2000. The matter was withdrawn from that court. It is not clear why it was withdrawn. The attorney representing the accused at that stage also withdrew from the matter. It was argued that thenceforth the Applicant was unable to pursue the matter further because of lack of funds. It was argued that the Applicant could not hire another lawyer because he was incapacitated by the

employer.

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The court was referred to the case of *Bunnie Patrick Mhlanga v Principal Secretary, Ministry of Public Works and Transport, 1st Respondent, and the Attorney General 2nd Respondent Industrial Court of Swaziland Case No. 130/03*. In that case the salary of the Applicant has been suspended for more than a month. In the present case it is more than five years since the Applicant was suspended without pay. It is argued that he failed to bring the matter before this court after it was withdrawn from the High Court in 2000 because of lack of money.

There was no authority cited supporting the argument that poverty is or could be a ground for the court to condone late filing of an application in court or to condone non-compliance with the normal court rules of bringing an application to court.

The court is not persuaded that it should hear this matter as urgent application just because the Applicant was poverty stricken at the time when he should have sought relief in this court. It is not known to the court as to why did the Applicant not approach the Labour Office to report his case where he would not have been required to pay any fee.

It is clear to the court that the Applicant has failed to establish urgency in this matter. Prayer 1 of the Notice of Application therefore fails.

The court having found that urgency has not been established in this case, it follows that the court does not have jurisdiction to entertain the matter as it now means it is before the court in violation of the provisions of Part V111 of the Industrial Relations Act No. 1 of 2000 relating to disputes procedure.

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The application is accordingly dismissed. No order for costs is made.

The members agree.

NKOSINATHI NKONYANE

ACTING JUDGE - INDUSTRIAL COURT

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