IN THE INDUSTRIAL COURT OF SWAZILAND
HELD AT MBABANE

CASE NO. 523/06

In the matter between:

LAVUMISA DLAMINI **APPLICANT**

And

SWAZILAND TELEVISION AUTHORITY **1ST RESPONDENT**

CHIEF EXECUTIVE OFFICER **2ND RESPONDENT**

CORAM:

NKOSINATHI NKONYANE: **ACTING JUDGE**

GILBERT NDZINISA: **MEMBER**

DAN MANGO: **MEMBER**

FOR APPLICANT: **MR. N. MTHETHWA**

FOR 1st RESPONDENTS: **MR. S. MNGOMEZULU**

RULING ON POINTS OF LAW

29.08.06

[1] The Applicant was employed by the 1st Respondent in April 1988 as a Television Producer. She served in this position until 20th June 2002 when she was appointed Acting Broadcast Manager with effect from 17th June 2002. The letter of appointment as the Acting Broadcast Manager is annexed to the Founding Affidavit and is marked as annexure "A".

[2] The Applicant served as the Acting Broadcast Manager for a period of four years. She was however, by a letter dated 1st August 2006, and signed by the 2nd Respondent told to resume her previous position as Television Producer.

[3] The Applicant said that she was never consulted before such a drastic decision was taken by the 2nd Respondent. She stated in her affidavit that such conduct amounted to a demotion. She averred further that the 2nd Respondent's conduct constituted unfair labour practice.

[4] In her Founding Affidavit, she also stated that the position of Broadcasting Manager was thereafter advertised and the closing date of applications was the 10th August 2006. She stated that to her knowledge the position has not yet been filled.

[5] The applicant has consequently brought an urgent application to court and she prays for the following orders:-

"1. Condoning any non compliance with the rules of court, time limits and hearing this matter as one of urgency.

2. Interdicting and restraining the 2nd Respondent from effecting an appointment to the vacant position of Television Production Manager pending the finalization of the dispute reported at CMAC.

3. That paragraph 2 shall operate with immediate and interim effect.

4. Costs of the application.

5. Further and or alternative relief."

[6] The matter came before the court on 22.08.06. There is no affidavit of service in the record. It transpired in court however that the Respondents were served on the previous day, the 21.08.06 as the Applicant initially intended that the application be heard at 2:30 P.M. on that day.

[7] The Respondents are properly represented by counsel. The Respondents did not file a notice to oppose, but only filed a notice to raise points of law. The Respondents also did not file any Answering Affidavits.

[8] Presently, the only evidence before the court is that of the Applicant.

[9] It is trite law that if a party elects to raise points of law only and does not file these together with its Answering Affidavit, it runs the risk of the court considering the only evidence before it, to wit, the applicant's Founding Affidavit.

[10] Mr. Mngomezulu raised three points of law on behalf of the Respondents. These are (i) urgency, (ii) relief sought and (iii) nonjoinder.

[11] **URGENCY**

Mr. Mngomezulu argued that the Applicant failed to establish why the matter should be heard by the court as a matter of urgency. He argued that the Applicant having become aware of the advertisement of the post on 01.08.06, she cannot claim that the matter is urgent as she had about three weeks within which to act but did not do anything.

[12] Mngomezulu also argued that the applicant has no good cause to ask the court to intervene, as she did not even apply for the post. The court was referred to this court's decision in the case of **LWAZI MDZINISO VS CONCILIATION MEDIATION AND ARBITRATION COMMISSION CASE NO. 150/2006.**

The court's decision in the Lwazi Mdziniso case was based on the decisions in the cases of **HUMPHREY H. HENWOOD V. MALOMA COLLIERY LIMITED AND ATTORNEY GENERAL (HIGH COURTS CASE NO. 1623/94 AND PHYLIP NHLENGETHWA AND 6 OTHERS V. SWAZILAND ELECTRICITY BOARD (I.C.) CASE NO. 272/2002.**

These cases were however departed from in a subsequent decision of this court also dealing with the question of urgency.

The court will therefore follow the decision in the subsequent case of **VUSIGAMEDZE Vs. MANANGA COLLEGE (I.C.I CASE NO. 267/06.**

In that case the court was, *inter alia,* referred to the case of Zodwa Mkhonta v. Swazliland Electricity Board (I.C.) case no. 343/2000 as authority that where the founding affidavit reveals a manifest injustice or a grossly unfair labour practice, that in itself constitutes a good ground for urgency.

In the present case the applicant managed to show in her papers that she will be substantially prejudiced if the application is not heard as a matter of urgency, In paragraph 27 of the Founding Affidavit she said she did riot even bother to apply because it would be ironic of her to be reappointed after having been demoted from the position.

It seems to the court therefore that the applicant cannot be faulted for bringing this application to court after the passage of three weeks taking into account the manner that she was treated by the 2nd Respondent and also that she had to instruct an attorney.

Furthermore, the Founding papers show that the applicant was not consulted before she was removed from the position. The applicant will indeed be substantially prejudiced if the matter were to take the normal route as the position might be filled and the respondents could then raise the defence that the application has been overtaken by events.

[18] **RELIEF SOUGHT:-**

Mr. Mngomezulu argued that the applicant has failed to satisfy the requirements of an

interdict. We do not agree with Mr. Mngomezulu. We are satisfied from the applicant's founding affidavit that a prima facie case has been made for an interim order. Whether a case for a final interdict has been made cannot be properly determined at this preliminary stage, but after hearing arguments on the merits of the case.

[19] **NON-JOINDER:-**

It was argued that the applicant's application was defective in that she had failed to join International Development Centre for Africa Consultancy, which was entrusted with the recruitment exercise. This was a submission made from the bar. There was no evidence that the applicant was aware of the said recruitment agency. Again, this matter can only be determined by the court after hearing full arguments on the merits.

[20] Taking into account all aforegoing observations, the points of law will be dismissed.

No order for costs is made.

The members agree.

NKOSINATHI NKONYANE A.J
INDUSTRIAL COURT