

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 544/07

In the matter between:

ABSALOM VILAKATI

1st Applicant

LUCKY THOMO

2nd Applicant

NATHI MHLANGA

3rd Applicant

SINDI DLAMINI

4th Applicant

ABEL HLOPHE

5th Applicant

JOSEPH SIKHOSANA

6th Applicant

SIMON SHABANGU

7TH Applicant

MANDLA DLAMINI

8th Applicant

and

**SWAZILAND MANUFACTURING AND
ALLIED WORKERS UNION**

1ST Respondent

**MEMBERS OF THE NEC OF THE FIRST
RESPONDENT IN THEIR OWN CAPACITIES**

2ND Respondents

**MEMBERS OF THE INTERIM COMMITTEE
OF THE FIRST RESPONDENT IN THEIR
OWN CAPACITY**

3RD Respondents

CORAM:

P. R. DUNSEITH	:	PRESIDENT
JOSIAH YENDE	:	MEMBER
NICHOLAS MANANA	:	MEMBER
FOR APPLICANT	:	D. MSIBI
FOR RESPONDENT	:	S. KUNENE

RULING ON POINTS IN LIMINE – 14/12/2007

1. On 11th December 2007 the court heard arguments on two points in limine raised by the Respondents.
2. The first point raised the issue whether the Applicants were properly before the court. Mrs. Kunene for the respondents argued firstly that the Applicants have no mandate to represent the Cadbury's Branch Committee of the 1st Respondent, and secondly that there is no evidence that the 3rd, 4th, 5th, 7th and 8th Applicants have authorized the institution of these proceedings on their behalf.

3. There is no merit in the first argument. The Applicants do not purport to represent their Branch Committee. The deponents to the founding affidavits state clearly that they litigate in their personal capacities. As members of the union they have locus standi in their personal capacity to challenge an allegedly unconstitutional election of office bearers.
4. There is merit in the second argument. The 3rd, 4th, 5th, 7th and 8th Applicants have not made supporting affidavits, and no allegation is contained in the founding and supporting affidavits to the effect that they have authorized the institution of this application.
5. The second point in limine raised the question of urgency. Mrs. Kunene argued that the Applicants delayed in bringing the application to court to such an extent that they have forfeited the right to have the matter dealt with on an urgent basis.
6. At the end of arguments, the court upheld the first point in limine to the extent of finding that the 3rd, 4th, 5th, 7th and 8th Applicants were not properly before the court and they were removed as Applicants. On the second issue of urgency the court reserved its ruling. The ruling now follows.
7. The elections which the 1st, 2nd and 6th Applicants seek to set aside were held on 30th September 2007. The Cadbury's Branch Committee of the 1st Respondent wrote to the Interim

National Executive Committee on 2nd October 2007 challenging the election results. No reply was received, which is not surprising since the Interim Committee was functus officio after the elections. The Applicants thereafter delayed until 30th October 2007 before instituting an urgent application seeking nullification of the election results.

8. This application was defective and was immediately withdrawn by the Applicants, who were ordered to pay the Respondent's wasted costs.
9. A further period of three weeks elapsed before the present application was launched on the 28th November 2007.
10. No reason for these delays has been advanced by the Applicants. The delay of one month before instituting the first application was unreasonably long and called for an explanation, which has not been provided. Having withdrawn an application which was already late, it was expected that the Applicants would engage top gear if they wanted to preserve the urgency of the matter. Nonetheless, they delayed for a further three weeks.
11. In the case of **Humphrey Henwood v Maloma Colliery High Court Case 1623/94** it was held that *an Applicant who delays unreasonably in approaching the court cannot rely on urgency*. See also **Lwazi Mdziniso v CMAC (IC Case No. 150/2006)**.
12. The Applicants cannot ask for an urgent hearing causing

inconvenience the court, the Respondents and other litigants waiting their turn for a hearing, when they have been unreasonably dilatory in asserting their claim. The inherent urgency of the matter has been lost whilst the Applicants dawdled along the path to the court.

13. The point in limine must be upheld. If the Applicants wish to pursue their claims, they must follow the normal requirements and procedures of the law and the rules of court. The application is dismissed. There is no order as to costs

The members agree.

PETER R. DUNSEITH

PRESIDENT OF THE INDUSTRIAL COURT