IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO. 221/2009**

In the matter between:

SWAZILAND POSTS & TELECOMMUNICATIONS
WORKERS UNION **1ST APPLICANT**
INNOCENT NGCOBO **2nd APPLICANT**
LAURENCE MATSEBULA **3rd APPLICANT**
THULANI MKHONTA **4th APPLICANT**
WELILE MTHIMKHULU **5th APPLICANT**
NOMPUMELELO DLAMINI **6th APPLICANT**

and

CORPORATION **RESPONDENT**

CORAM:

S. NSIBANDE JOSIAH **PRESIDENT**
YENDE NICHOLAS **MEMBER**
MANANA **MEMBER**

MR. B. S. DLAMINI **FOR APPLICANTS**
MR. Z. JELE **FOR RESPONDENT**

RULING ON POINTS OF LAW - 4/06/2009

1. The Applicants have applied to the court on a certificate of urgency claiming for an order;

"1. Dispensing with the normal forms of service and time limits and hearing this matter on an urgent basis.

2. That a rule nisi be and is hereby issued calling upon the Respondent to show cause on a date and time to be determined by the above Honourable Court why:

9. *the suspensions from work levelled against the 2nd to &h Applicants herein by the Respondent should not be reviewed, corrected and/or set aside as being irregular and unlawful;*

10. *the charges preferred against the 2nd to Applicants herein by the Respondent should not be declared invalid and falling outside the scope of the Respondent's disciplinary code and procedure.*

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11. *That an order be and is hereby issued declaring that the 1st Applicant's Executive Members are entitled to pursue lawful demands on behalf of their members without fear and /or victimization by the Respondent.*

12. *That an order be and is hereby issued declaring that it is unlawful for the Respondent to use its disciplinary powers with a view to instilling fear and/or coercing its employees to abandon their lawful demands in the course of collective bargaining.*

13. *That an order be and is hereby issued declaring that any intended disciplinary action and/or suspensions against members of the 1st Applicant arising from the same set of facts relating to the events of the 5th May 2009 is wrongful and unlawful.*

14. *Costs of the application in the events of unsuccessful opposition hereto.*

15. *Further and/or alternative relief."*

2. When the matter came to court on 27th May 2009 the Respondent had managed to file its Answering Affidavit in which it raised four preliminary points of law. The first point was abandoned at the hearing and we will therefore not consider it. The three points remaining were as follows:

IA Ho **Dasia** ior **in ignoring in an internal disciplinary hearing -**

The Respondent submitted that the Applicants had not outlined in the founding affidavit any basis to warrant that the court should intervene in an internal disciplinary process. The chairpersons of the disciplinary hearings involving the applicants are seized with

the issues the applicants had brought to court and the applicants ought to present their complaints to such chairpersons.

2.2 **Suspension** - that the Respondent as an employer has the right to suspend the 2nd to 6th Applicants in terms of the Employment Act, the provisions of the Recognition Agreement as well as the Disciplinary Code and Procedure and that no cogent reason has been advanced in the Founding Affidavit to warrant the court's intervention.

2.3 Disciplinary Charges - that it is the right and prerogative of management to effect discipline where there is a breach of disciplinary standards or misconduct. That the disciplinary code is not exhaustive of the work place rules and that certain offences may be determined from the common law or basis has other sources. No been set out by Applicants for disciplinary charges. setting aside the

2.4 Arbitration - The Respondent is an essentia services employer and the prayers sought by applicants in prayers 3, **4,** and 5 relate to the interpretation of the Recognition Agreement entered into by the parties. The parties have agreed to refpr such dispute to arbitration. The court can therefore not deal The Applicants must with these prayers, adhere to the provisions Agreement in this of the Recognition respect.

; he Respondent's submission was that the 2nd to 6"' Applicants' were currently appearing before disciplinary tribunals regarding allegations of misconduct levelled against them. The consequence thereof, it was submitted, is that the chairpersons of those disciplinary tribunals are seized with the matters and the Applicants' contentions that their suspensions were irregular and unlawful and thai; face are invalid are questions that the charges they ought to be chairpersons. The court was told that it could only decided by those interfere in the uncompleted internal disciplinary hearings if there has been or there is likely to be a travesty of justice that is incurable. Jhe Applicants had failed to show that a travesty of justice had occurred or was likely to occur in this case.

4. The court was referred to various authorities for the principles that the court is reluctant to and rarely interferes in the internal disciplinary procedures.

Simon Mvubu v Ngwane Mills - IC Case No. 198/99;

Bhekiwe Hlophe v Swaziland Water Services Corporation IC Case No. 411/2006;

Sazikazi Mabuza v Standard Bank of Swaziland Limited & Another IC Case No. 311/2007;

Ndoda Simelane v National Maize Corporation (Pty) Ltd IC Case No. 453/06.

16. The Applicants' case was that section 8 (1) of the **Industrial Relations Act** read with section **4** (1) of the **High** Court **Act** vests this court with authority to review decisions of inferior courts and triounals. As such the court ought to review the Respondent's decision to suspend the 2nd to 6th Applicants as well as set aside the charges they face for the manner in which they came about.

17. The attitude of the courts has long been that it is inappropriate to intervene in an employer's internal disciplinary proceedings until they have run their course except in exceptional circumstances. In the case of **Graham Rudolph v Mananga College IC Case No. 97/2007,** this court reaffirmed its reluctance to interfere with the prerogative of an employer to discipline its employees. However the court stated that it would intervene to prevent a procedural unfairness which may cause the Applicant irreparable harm.

7. There is no question therefore that this court can intervene in the internal disciplinary proceedings even when they are not finalised where exceptional circumstances exist. However, in respect of this matter, the Applicants are already before independent chairpersons answering to certain charges. The issues placed before the court ought in our view, to be placed before such independent chairpersons for determination. It is such chairman who will decide whether the charges should be declared invalid as well as whether the Applicants' suspension fall outside the disciplinary code and procedure and whether they should be set aside.

8. . The court is loathe to usurp the discretion of the chairpersons of these disciplinary enquires particularly where they have not had the opportunity to exercise same. As was the case in the **Ndoda Simelane**

case (supra), the Applicants appear to have "jumped the gun" by coming to court instead of attending the disciplinary hearings and requesting the chairpersons to make a decision on question of the suspensions and the charges.

18. In the premises we are of the view that the Applicants ought to raise their complaints with the chairpersons of their disciplinary enquiries. The court will not make any comment on the appropriateness of the suspensions or the charges that the Applicants face for the simple reason that we do not want to pre-empt the chairpersons' decisions.

19. The application is therefore dismissed and there will be no order as to costs.

S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT