IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO. 176/2009**

In the matter between:

ASSOCIATION OF LECTURERS AND ACADEMIC PERSONNEL (ALAP) **Applicant**

and

THE UNIVERSITY OF SWAZILAND **Respondent**

CORAM:

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

MR. A. LUKHELE MR. **FOR APPLICANT FOR**
M. SIBANDZE **RESPONDENT**

J U D G E M E N T - 29/06/09

1. The Applicant is a staff association recognized by the Respondent as the representative of Respondent's employees who fall under the category of Academic and Administrative Staff.

7. The Respondent the_ University of Swaziland is Swaziland's oniy— university and is established in terms of the University of Swaziland Act No. 2/1983.

8. The parties agreed on certain guidelines relating to the promotion of the Academic Staff constituting Applicant's members - Guidelines relating to promotion of Academic Staff. These guidelines have been in use since March 2007, according to the Applicant or since April 2000 according to

the Respondent.

9. During late 2007, the Respondent evidenced an intention to review the then applicable guidelines related to the promotion of Academic staff. The Applicant was invited to make its input thereto and indeed did so in February 2008.

10. In March 2009, the Respondent invited Applicant's members to gpolv for promotion and advised that revised guidelines regarding the promotion of Academic Staff were available and should be collected with the application forms. Applicant then approached the Respondent on the implementation of the new guidelines and sought that they be withdrawn, without success.

6. Having failed to persuade the Respondent to withdraw the new guidelines the Applicant has now approached this court for an order:

"1. Waiving the usual requirements of the rules regarding notice, service and form of application and hearing the application as one of urgency.

2. Staying and suspending the implementation of the new guidelines relating to the promotion of the Academic Staff attached and marked A±AP 4 until such time as same are agreed between Applicant and Respondent.

3. In the event of the Honourable Court granting a rule nisi in terms of prayer 1 above, ALTERNATIVELY, postponing the application in respect of the above prayer, then the Applicant seeks an interim order in the following terms:

11. *Pending finalization of the application the Respondent is interdicted from giving effect and implementing the guidelines relating to the promotion of the Academic Staff.*

12. *Directing and ordering the Respondent to engage in discussion with the Applicant concerning all issues pertaining to the implementation of the guidelines relating to the promotion of Academic Staff.*

13. *Costs of suit.*

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

15. The Respondent opposes the application and at the first hearing of the matter on 22nd April 2009, undertook not to implement the new guidelines pending finalization of this application. The Respondent subsequently filed its answering affidavit and the Applicant its replying affidavit.

16. Despite that the Respondent raised certain points in limine, the parties agreed to argue both points in limine and the merits when the matter was heard.

9. The Respondent raised the following points in limine:

9.1 Urgency: Respondent argued that the legal requirements for the Honourable Court to waive the usual requirements regarding notice, service and form had not been met by the Applicant. The Respondent further submitted that there were no compelling reasons why this matter should be heard urgently as the Applicant could report a dispute and have the matter heard through the dispute resolution procedures set out in Part V111 of the **Industrial Relations Act 2000.** Should the matter remain unresolved, then this Court could issue a retrospective order if it finds that the new guidelines should not have been implemented for lack of consultation.

Finally, the Respondent submitted that in this.cour*. ^' issue of urgency cannot be overtaken by events. The court was urged to dismiss the application on the basis that the Applicant's reasons do not justify a departure from the usual rules.

9.1.1 The Applicant's position was that the matter had taken some time from the date it was launched to the date it was argued and that the passage of time rendered the point relating to urgency academic, it had been

overtaken by events. The court was urged to follow the decision in **Dumsane H. Mkhonta & Emahlungwane (Pty) Ltd vs Swaziland Development & Savings Bank and Flora** Dube **N.O.** in re- **Swaziland Development & Savings Bank and Dumsane Hamilton Mkhonta t**/a

Emahiungwane (Pty) Ltd High Court Case No. 876/20001. In that case the learned Judge Maphalala stated that in view of the passage of time it would be pointless for the court to consider the point concerning urgency and that in view of those circumstances he would proceed to consider the matter as if it had commenced in the long form.

Further the Applicant asserted that it had met the legal requirements by adequately setting out the issues that render the matter urgent namely the Respondent's stated intention to apply the new guidelines from April 2009.

9.1.2 In our view, the urgency requirements of the Hiqh Court are gener^y similar to those of this court but differ in one material respect. It is **a** requirement in this court which is not **a** requirement in the High Court, that all matters go through the conciliation process set out in Part V111 of the **Industrial Relations Act 2000** as amended, and are certified as unresolved disputes before they can be brought to this court for determination. An Applicant who brings an urgent application must not only satisfy the court that the matter is sufficiently urgent to justify the usual time limits prescribed by the rules of court being outlined^but must also establish good cause for dispensing entirely with the conciliation process. As set out in **Phillip Nhlengetfwa & Others vs Swaziland Electricity Board (industrial Court Case No. 272/2002),** the Industrial Court will also consider

attempt being made to resolve the matter by means of the statutory conciliation process under CMAC.

The Applicant complains of the rights of its members being trampled on by the Respondent. No doubt it is the duty of this court to protect those whose rights are being trampled on as well as victims of injustice and unfair labour practices. It is our view however that this can equally be achieved in terms of the normal procedures. The Applicant seeks an order directing that the Respondent engage it in discussions

concerning all issues pertaining to the implementation of the guidelines relating to the promotion of staff but has ignored completely the statutory conciliation process that could achieve the same purpose, for reasons not explicitly spelt out in its papers.

Rule 14 of the Industrial Court Rules 2007 allows a party which does not foresee material disputes of facts in its dispute to approach the court by notice of motion and not have to wait for its matter to be allocated a trial date in the congested role. Such party must in almost all instances have gone through the process set out in Part VIII of the Act. It is not clear why the Applicant has not taken advantage of this procedure.

In the exercise of our discretion the court holds that the matter will not be enrolled as one of urgency. Having so decided it is not necessary to deal with the other points raised. The application is dismissed and there will be no order as to costs.

S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT