



## **IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 196/10**

In the matter between:

**ZODWA SEYAMA**

**APPLICANT**

And

**UNITED PLANT PRODUCERS**

**1<sup>ST</sup> RESPONDENT**

**ARCHIE SAYED**

**2<sup>ND</sup> RESPONDENT**

**JOANA MBETSE**

**3<sup>RD</sup> RESPONDENT**

**SIPHIWE MASEKO**

**4<sup>TH</sup> RESPONDENT**

**DORIS LUKHELE**

**5<sup>TH</sup> RESPONDENT**

**CORAM:**

**N. NKONYANE**

**: JUDGE**

**DAN MANGO**

**: MEMBER**

**GILBERT NDZINISA**

**: MEMBER**

**FOR APPLICANT**

**: MR. Z. DLAMINI**

**FOR RESPONDENTS**

**: MR. C. BHEMBE**

---

**RULING ON POINT OF LAW**  
**18 .06.10**

---

[1] The applicant has instituted the present application under a certificate of urgency and is seeking an order in the following terms:

“1. Dispensing with the usual and normal requirements of the Rules of Court in respect of notices, time limits and service of documents and that this matter be heard as one of urgency;

2. That a *rule nisi* do hereby be issued, calling upon the Respondents to show cause, on a date to be determined by the above Honorable Court why an Order in the following terms should not be made final:

2.1 That the summary dismissal of the Applicant be set aside and be declared null and void *ab initio* and of no force and effect as the legality of the Board which recommended Applicant’s summary dismissal is being challenged at the High Court of Swaziland under case no. 843/2010;

2.2 That the Applicant be reinstated to her employment position of Manager of the 1<sup>st</sup> Respondent;

2.3 Granting an Order for costs on an Attorney and own Client Scale;

3. That prayers 2.1 and 2.2 above operate with immediate effect pending final determination of this application;

4. Granting further and/ or alternative relief.

[2] The application is opposed by the respondents. In their answering affidavit the respondents raised a point of law. The court is therefore called upon to make a ruling on the point of law raised by the respondent.

[3] The respondents raised a point of law challenging the jurisdiction of this court to entertain this application. It was argued on behalf of the respondents that the order sought by the applicant would require this court to pronounce on the legal status of the 1<sup>st</sup> respondent's Board of Directors which terminated the services of the applicant. It was argued that this court has no power to pronounce on the legal status of the Board of Directors of the 1<sup>st</sup> respondent.

[4] The brief facts of the matter showed that the applicant was an employee of the 1<sup>st</sup> respondent. She was called to a disciplinary hearing by letter dated 22<sup>nd</sup> March 2010 (Annexure

“ZS1”) by the 1<sup>st</sup> respondent. She was found guilty and was dismissed by letter dated 8<sup>th</sup> April 2010 (Annexure “ZS3”). This happened whilst she was under suspension. She challenged the 1<sup>st</sup> respondent’s power to suspend her in this court. The main reason for her to take that course of action was that she was questioning the legality of some of the 1<sup>st</sup> respondent’s members of the Board of Directors.

- [5] She was unsuccessful and the application was dismissed by the former President of this court on the basis that the questions raised in her application required a pronouncement on the legal status of the Board of Directors, and that such questions could be answered by the High Court.

**See: Zodwa Seyama v. United Plant Producers (Pty)  
Ltd, 1<sup>st</sup> Respondent, & Nine Others case No. 684/09(IC)**

- [6] The applicant accordingly launched action proceedings at the High Court under case No. 843/2010. The matter is still pending before the High Court.

- [7] On behalf of the applicant it was argued before this court that:
- i. The court is not being called upon to make a pronouncement on the legality of 1<sup>st</sup> respondent’s Board members.

- ii. Since it is not in dispute that the applicant was an employee of the 1<sup>st</sup> respondent this court has exclusive jurisdiction to entertain the present application as it arose in the context of employer- employee relationship.

[8] The present case is clearly distinguishable from the case of **Zodwa Seyama v. United Plant Producers (Pty) Ltd, 1st respondent, and Nine Others** referred to supra. In that case the applicant had not yet filed any proceedings before the High Court challenging the legality of some of the Board members of the 1<sup>st</sup> respondent. The applicant has since instituted proceedings before the High Court. The matter is still pending at the High Court and the question as to who are the rightful directors of the 1<sup>st</sup> respondent is yet to be decided.

[9] The view of the court taking into account all the evidence before it in this matter is that:

- i. The evidence that the status or legality of the 1<sup>st</sup> respondent's Board members is presently being challenged at the High Court is not in dispute. This court is of the view that it was not proper for the 1<sup>st</sup> respondent's Board members to call the applicant to a disciplinary hearing and dismiss her when the question of their legality is still pending before the High Court.

- ii. The court in this application will not answer the question of the legal status of the 1<sup>st</sup> respondent's Board members. This is an issue pending before the High Court.
  
- iii. *Prima facie*, there is no dispute that although the applicant was a Director and shareholder, she was also an employee of the 1<sup>st</sup> respondent. Her services were terminated pursuant to a disciplinary action and a suspension. This showed that there was an employer – employee relationship between the parties and this court has exclusive jurisdiction to determine questions of fairness or otherwise of the applicant's suspension or dismissal.

[10] Taking into account all the evidence before the court and the submissions made on behalf of the parties, the court will come to the conclusion that the order sought by the applicant will not require the court to pronounce on the legal status of the 1<sup>st</sup> respondent's Board of Directors. This court therefore does have the jurisdiction to hear and entertain the present application. The court will therefore make the following order;

- a. **The point of law raised is dismissed.**
- b. **No order for costs is made.**

The members are in agreement.

**N. NKONYANE**  
**JUDGE OF THE INDUSTRIAL COURT**