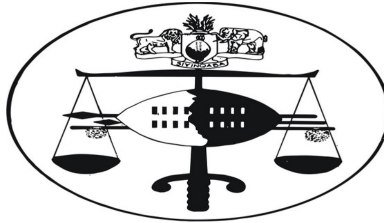


IN THE INDUSTRIAL COURT OF SWAZILAND

JUDGEMENT

CASE NO. 342/2016

In the matter between:

SWAZILAND NATIONAL ASSOCIATION OF CIVIL SERVANTS ON BEHALF OF HOSPITAL ODERLIES AND AUXILLIARY STAFF	**APPLICANT**

AND

CIVIL SERVICE COMMISSION	**1ST RESPONDENT**
MINISTRY OF PUBLIC SERVICE AND INFORMATION	**2ND RESPONDENT**
MINISTRY OF HEALTH	**3RD RESPONDENT**
ATTORNEY GENERAL	**4TH RESPONDENT**

Neutral citation : *SNACS on behalf of Hospital Orderlies and Auxiliary Staff v Civil Service Commission & 3 Others [2016] SZIC 57 (22 November 2016)*

CORAM : **DLAMINI J,**
(Sitting with ***D. Nhlengethwa*** *- Nominated Member of the Court)*

Heard : **17 November 2016**
Delivered : **23 November 2016**

Summary: **_Labour law – Industrial Relations –_** *Status of arbitration award in terms of section 17(2) of the Industrial Relations Act, 2000 (as amended). Significance and effect of Rule 14(12) of the Rules of this Court.* ***Held:*** *Rule 14(12) meant to deal with lacuna in the Industrial Relations Act in the execution of arbitration awards.*

1. For determination in this dispute is the status of an arbitration award issued under the auspices of the Conciliation Arbitration and Mediation Commission (CMAC). The brief common cause facts of this matter are that on 26 September 2013, a Commissioner at CMAC, Khanyisile Msibi, issued an arbitration award in favour of the Applicants in terms of which she directed the Respondents as follows;

   - *"…to upgrade the positions of all orderlies in the country to Grade A4. This upgrade is to be implemented as from the 1st April 2014, to enable the Respondents to sufficiently include the same in its budget...*
   - *…to consider internal advertising all auxiliary positions. This is to be implemented with immediate effect. The Respondents can only recruit externally if no suitable position is identified within the cadre."*

2. The Applicants have now approached this Court on motion proceedings seeking to register their award as an order of this Court. The Respondents oppose this application. In so doing they have only raised a point of law to the effect that there is no need for this Court to

so endorse and register the arbitration award because in terms of section 17(2) of the Industrial Relations Act 2000 (as amended) it is enforceable as if it were an order of the Court. They opted not to file an answering affidavit in this matter, contending that there was no need to.

3. In buttressing this point, Attorney Mr. Vilakati on behalf of the Respondents submitted that this Court, being a creature of statute can only do that which it is empowered by the legislation so establishing it. In this regard, the Industrial Relations Act 2000, as amended, does not enable this Court to register and thus make CMAC arbitration awards orders of Court. And the reason for this is simple, and it is that arbitration awards under the auspices of CMAC can already be enforced just like orders of this Court in terms of section 17(2) of our Industrial Relation Act. He finds it absurd that the Applicants had to run to this Court for the registration of their award when it already enjoys the same status as orders of this Court. This amounts to unnecessary duplication and therefore unnecessarily burdens this Court, he summed up. He accordingly prayed for a dismissal of the Applicants application.

4. On behalf of the Applicants, Attorney Mr. Dlamini started off by referring the Court to rule 14(12) of the Rules of this Court which provides thus;

> *"An interlocutory application or an application for the registration of a settlement agreement, an arbitration award or a collective agreement, may be set down on atleast four (4) days' notice to the Court and the parties. Such application may be supported by such affidavits as the case requires."*

5. Since the rules of this Court allow for the registration of arbitration awards, the present Applicants are therefore perfectly entitled to approach this Court in the manner they did to so register their award, Attorney Dlamini argued. He further submitted that there was no prejudice to be suffered by the Respondents if the Court were to register the award.

6. Indeed an arbitration award under the auspices of CMAC can be enforced as if it were an order of this Court because they have the same status as the orders of this Court. Interestingly though, it cannot be disputed that CMAC has not be clothed with the powers of going

further than just granting awards which have the same status as orders of this Court. When a party, in whose favour an award has been pronounced for instance, wishes to have a writ of execution sued out, CMAC cannot issue such writ, thus leaving the successful party with an empty award. This is where rule 14(12) then comes into effect. This rule allows for the registration of arbitration awards so that a party who wishes to sue out of the office of the Registrar a writ for execution can be assisted. The award first has to registered and endorsed as an order of this Court before the Registrar can give effect to it. It has to become a process of the Court before the Registrar can act on it (See also: **SMAWU v SUB (PTY) LTD IC Case no. 72/2006**). The registration of an arbitrator's award is therefore a necessary step in order to give effect to the provisions of section 14(b) of the Industrial Relations Act, 2000 (as amended). If anything, arbitration awards need to be worth more than just the paper they are written on. And this is can only be through their registration in this Court.

7. A question which quickly props up in this regard is whether there is a conflict between section 17(2) of the Industrial Relations Act and rule

14(12) of the Rules of this Court? The answer in this regard is none whatsoever. Rule 14(12) was meant to close the lacuna in the law in relation to arbitration awards issued by CMAC. This would be in instances where a party who was successful at arbitration would find themselves unable to sue out a writ in order for them to execute, since CMAC does not issue out writs and there is no provision in the Industrial Relations Act for it (CMAC) to do so. It is meant to allow the Registrar to be able to assist successful parties at CMAC arbitrations who might otherwise might find themselves running from pillar to post trying to enforce their awards, such as the present Applicants. Once the award is registered and endorsed as an order of Court, the Registrar can then act on it should a party wish to sue out a writ. That is the whole purpose of this rule 14(12). Where however, a successful party presents an award to an Employer and there is no resistance from that Employer in having the award enforced, then it would be enforced as if it were an order of the Court in terms of section 17(2). It is that simple.

8. In light of the aforemention observations and findings, it follows therefore that the *point in limine* as raised by the Respondents is

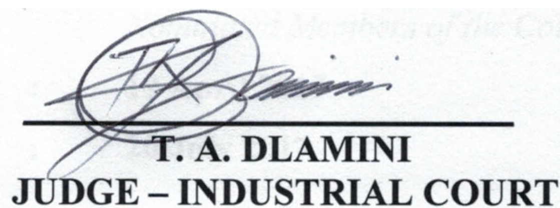
without merit and therefore stands to be dismissed. The Court therefore makes orders as follows;

a) The point in limine raised by the Respondents be and is hereby dismissed.

b) The arbitration award issued by the Conciliation Mediation and Arbitration Commission on 26 September, 2013 be and is hereby registered and endorsed as an order of this Court.

b) The Court makes no order as to costs.

The members agree.



T. A. DLAMINI
JUDGE – INDUSTRIAL COURT

DELIVERED IN OPEN COURT ON THIS 23RD DAY OF NOVEMBER 2016.

For the Applicant : Attorney Mr. Z. Dlamini (Dlamini-Kunene Attorneys)
For the Respondents : Attorney Mr. M. Vilakati (Attorney General's Chambers)