IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO: 82/2018**

In the matter between:

NTOKOZO CYRIL SIBANDZE	**1st APPLICANT**
TIMOTHY DLAMINI	**2nd APPLICANT**

And

SAAD MOHAMMED SAAD GROUP	**1st RESPONDENT**
THE KING'S OFFICE	**2nd RESPONDENT**
THE CHIEF EXECUTIVE OFFICER	**3rd RESPONDENT**

Neutral citation : *Ntokozo C. Sibandze & Another v Saad Mohammed Saad Group & Others [82/2018] [2018] SZIC 47 [12 June 2018]*

CORAM:

BONGANI S. DLAMINI	**:**	**ACTING JUDGE**
DAN MMANGO	**:**	**MEMBER**
NKHOSINGIPHILE DLAMINI	**:**	**MEMBER**

DATE HEARD	:	04 JUNE 2018
DATE DELIVERED	:	12 JUNE 2018

Summary: Labour Law- Application for interdict to secure employees' future claims of unfair dismissal- Applicants seeking to stop payment due to employer on the basis of having received "wind' to the effect that employer may leave court's jurisdiction.

Held; The allegations set out in Applicants' papers are insufficient and do not disclose a cause of action for the grant of the relief sought – Application accordingly dismissed.

JUDGEMENT

Introduction and brief outline of the facts

1.0 The relief sought by the Applicants against the Respondents in a Notice of Application dated the 25th April 2018 is couched as follows;

“1. That dispensing with the rules and manner of services [sic] provided for in the rules of the d [sic] above Honourable Court and enrolling the matter as one of urgency.

2. That condoning the 1st and 2nd Applicants for non-compliance with the Rules of the above Honourable Court.

3. That an order be and or /is hereby issued interdicting the 2nd and 3rd Respondent from effecting payment of the 1st Respondent pending resolution of the judicial proceeding for determination of unresolved dispute against the 1st Respondent either out of court settlement [sic].

4. That granting the 1st, and 2nd Applicant costs of suit of this application.”

2.0 The Application is supported by an affidavit deposed to by the First Applicant and confirmed by the Second Applicant.

3.0 The application is opposed by the First Respondent and the deponent to the answering affidavit disputes all the factual allegations made by the Applicants.

4.0 In the founding affidavit, the First Applicant alleges that;

"**7. I have commenced an action before the above Honourable Court for determination of the unresolved dispute against the 1st Respondent of which it is pending before the above Honourable Court while the above Honourable Court has since issued an interim order which removes the matter from the roll for possible out of Court resolution by consent [sic].**

8. I have got the wind which suggests that the 1st Respondent is due to leave the jurisdiction of the above Honourable Court in the event the contract between the 2nd and 3rd Respondent discontinued soon or thereafter [sic].

9. I submit that the interests of justice favoured [sic] that I commence an action for an order which interdict the 2nd and 3rd

Respondents from paying the 1st Respondent as it is a foreign controlled contractor contracted to the 2nd and 3rd Respondent.”

5.0 In summing up their cause of action, the First Applicant states as follows in paragraph (11) of the founding affidavit;

“**I therefore submit that, the fact that I have since got the wind of the fact that the 1st Respondent may leave the jurisdiction of the above Honourable Court it renders the matter urgent. It is my humble submission that it is highly possible that I stand to suffer prejudice and injustice as the 1st Respondent may leave the jurisdiction of Court with its financial assets.”**

6.0 There are no further allegations in the founding affidavit which seek to give credence to the relief sought by the Applicants other than the simple allegation of them having received ‘wind’ that the 1st Respondent may leave the jurisdiction of the Court.

7.0 It was only during arguments that Mr. Mabuza for the Applicants sought to present additional facts and allegations from the bar in an

attempt to give support to the relief claimed. The additional facts which the Applicants' representative sought to introduce from the bar were not pleaded and the Court cautioned him several times not to introduce new facts which are not contained in the pleadings.

Analysis of facts and the applicable law

8.0 There is plenty case law in our jurisdiction dealing specifically with the subject of the requirements for the granting of a final interdict, which is the relief sought by the Applicants in the present matter.

9.0 In the frequently quoted case of **Setlogelo v Setlogelo 1914 AD 221 at 227**, the court stated that;

"**It is well established that the pre-requisite for an interdict are a clear right, injury actually committed or reasonably apprehended and the absence of similar protection by another remedy."**

10.0 The Applicants seek to protect their right to pursue a claim against the 1st Respondent after allegedly receiving 'wind' that the latter may leave the jurisdiction of the Court. It cannot be disputed that the Applicants have a clear right to secure the claim which they have lodged against the 1st Respondent. In **Minister of Law and Order v**

Committee of the Church Summit 1994 (3) SA 89, the Court stated that;

"**Whether the applicant has a right is a matter of substantive law. The onus in applying for a final interdict is on the Applicant to establish on a balance of probabilities the facts and evidence that he has a clear and definitive right in terms of substantive law. The right which the applicant must prove is also a right which can be protected. This is a right which exists only in law, be it at common law or Statutory Law**."

11.0 The second requirement for the grant of a final interdict is that there must be harm suffered or harm reasonably apprehended to be suffered in the future if it were not to be immediately corrected by means of an interdict. It is against this requirement that the Applicants' case falls flat. The Applicants allege that they stand to suffer irreparable harm in the future because they have got 'wind' to the effect that the First Respondent may leave the jurisdiction of the Court.

12.0 The allegations made by the Applicants in their papers which have prompted them to approach this court and seek to protect their rights can best be described as meaningless, vague and embarrassing. A

party cannot be dragged to court and made to answer on allegations of 'wind' received by the other party. It is stated by **Hebstein & Van Winsel et al** **<u>The Civil Practice of the Supreme Court</u>** **(4th Ed) at p.364** that;

"**The supporting affidavit must set out a cause of action. If they do not, the respondent is entitled to ask the court to dismiss the application on the ground that it discloses no basis on which the relief can be granted. In application proceedings the affidavits constitute not only the evidence but also the pleadings and, therefore, while it is not necessary that the affidavits 'should set out a formal declaration or [answering] affidavit set out a formal plea, these documents should contain, in the evidence they set out, all that would have been necessary in a trial."**

13.0 The Applicants face a further hurdle in that all the factual allegations made in their founding affidavit are denied by the 1st Respondent. To illustrate this point, in paragraph [9] of the founding affidavit, the Applicants allege that;

14.0 "**9. I submit that the interests of justice favoured [sic] that I commence an action for an order which interdict the 2nd and 3rd**

Respondents from paying the 1st Respondent as it is a foreign owned and foreign controlled contractor contracted to the 2nd and 3rd Respondents."

15.0 In answer to the above quoted paragraph, the 1st Respondent alleges that;

"**Contents herein are emphatically denied. There is no substance to the averments save to state that they are baseless or without any legal basis…**"

16.0 Accordingly, on the pleadings filed in court, the very fact that the Second and Third Respondents are contracted to the First Respondent is denied. There is absolutely no evidence availed in Court to demonstrate the fact that there is money due to be paid to the First Respondent by the Second and Third Respondents based on contractual obligations. Indeed it seems weird and difficult to believe that the Third Respondent, being a Chief Executive Officer of the Second Respondent would, jointly with the organization he heads, enter into a contract with the First Respondent.

17.0 The third and final difficulty which the Applicants face in this matter is to be found in the form of relief which they seek against the Respondents. Assuming that a contractual relationship exists between the Second and Third Respondents with the First Respondent, and that there is money due to the latter based on such contract, the order sought by the Applicants is to "interdict payment" due to the First Respondent, irrespective of the amount involved. This kind of order is almost impossible to grant in its current form.

18.0 In their founding affidavit, the Applicants were required to disclose the total amount claimed against the First Respondent and that is the amount they should have sought to secure in their application and not the entire amount, assuming of course that there is any amount due to be paid to the First Respondent by the Second and Third Respondents. In its current form, the relief sought by the Applicant would not have been competent and proper to grant.

19.0 There being no evidence and sufficient factual allegations to the effect that the First Respondent may leave the jurisdiction of the Court as alleged by the Applicants or that there is any form of business

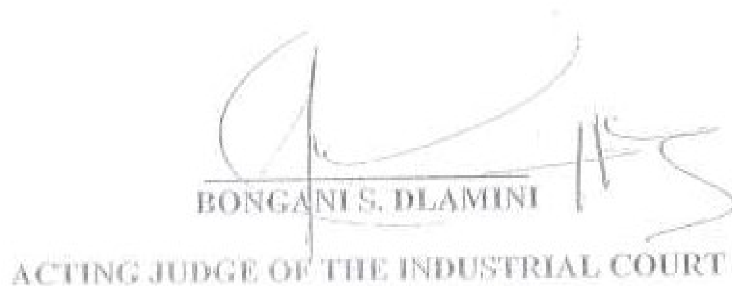
relationship between the Second and Third Respondents with the First Respondent, it follows that their application cannot succeed.

The court accordingly makes the following orders;

a) **The Applicants' application is dismissed.**

b) **There is no order as to costs.**

The members agree.



For Applicants: *Mr. M. Mabuza (Labour Law Consultant)*

For 1st Respondent: *Mr. B. Mdluli (Bongani G. Mdluli & Associates)*