



**IN THE INDUSTRIAL COURT OF ESWATINI**

**RULING**

Case No. 117/18

In the matter between:

**QUINTON DLAMINI**

Applicant

**And**

**THE NATIONAL PUBLIC SERVICE AND**

**ALLIED WORKERS UNION (NAPSAWU)**

Respondent

**Neutral citation:** Quinton Dlamini V The National Public Service and Allied Workers Union (NAPSAWU) (117/2018) [2018] SZIC 85 (14 August 2018)

**Coram:** **S. NSIBANDE JP**

(Sitting with Nominated Members of the Court Mr N. Manana and Mr S. Mamba)

**Heard:** 26 July 2018

**Delivered:** 14 August 2018

## **RULING ON POINT IN LIMINE**

[1] The Applicant approached the Court for an order:

1. Setting aside the decision of the Respondent suspending the Applicant from membership of the Respondent Union and from Union activities as irregular, unlawful and against the Respondent's own constitution.
2. Re-instating the Applicant back into his position of Chairperson of the Manzini Branch of the Respondent.
3. Interdicting and Restraining the Respondents from the preventing the Applicant from carrying out his duties as a member of the Union and as Chairperson of Manzini Branch of Respondent.
4. Directing the Respondent to dispatch the minutes and record of proceedings from the respective branches leading to the adoption of the resolution for the suspension of the Applicant from union membership and activities of the Respondent.

5. Declaring that the unilateral suspension of the Applicant from Membership of the Respondent Union and from Union activities is an Unfair Labour Practice and unlawful.
6. Costs of the application at attorney and own client scale.
7. Granting Applicant further and/or alternative relief.

[2] The application is opposed and in filing its answering affidavit the Respondent raised certain points *in limine*. It is in respect of these points that the Court issues this ruling.

[3] (a) *Res Judicata/Functus Officio*

Respondent contends that this Court dealt with the same issues in an application brought by the Applicant earlier and that the Court's judgment of 14<sup>th</sup> May 2018 put paid to the matter.

It appears to us that the Respondent has not grasped the contents of the judgment of 14<sup>th</sup> May 2018. The said judgment was in respect of points of law raised by the Respondent and did not address the merits of the matter as the parties never

argued the merits. While the subject matter of the judgment of 14<sup>th</sup> May 2018 was a matter similar to the one currently before Court, seeking similar relief, the merits thereof were never dealt with as the Court refused to enroll same as an urgent matter as applied for by the Applicant. The case of **Moresby – White v Moresby – White 1972 (2) SA** cited by Respondent states, ***‘Public Policy dictates that there be an end to litigation, that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered for ever settled between the parties ...’*** (my emphasis)

The facts herein are that this matter was never tried and that the Court has never pronounced on Applicant’s right to contest his suspension as he seeks to do. In the circumstances this point cannot succeed.

### Lis Pendis

The point of *Lis pendis* is misdirected. As a matter of fact, there is no other forum before which the parties are appearing. This point can not be sustained.

The remainder of the points raised, border on the merits of the case and in our discretion we direct that the matter be argued on the merits to include the issues raised in those points.

**[4] The Court therefore makes the following order:**

**(a) the points raised in limine are hereby dismissed.**

**(b) there is no order as to costs.**

The members agree.



**S. NSIBANDE**

**PRESIDENT OF THE INDUSTRIAL COURT**

**For the Applicant:** Mr P.K. Msibi

**For the Respondent:** Mr M. Dladla