



**IN THE INDUSTRIAL COURT OF ESWATINI**

**JUDGMENT**

Case No. 371/2018

In the matter between:

**TIMOTHY DLAMINI**

1<sup>st</sup> Applicant

**NTOKOZO SIBANDZE**

2<sup>nd</sup> Applicant

And

**ELISHIMI AMBRO ALI T/A SAAD MOHAMMED SAAD**

1<sup>st</sup> Respondent

**ELISHIMI ROOMY**

2<sup>nd</sup> Respondent

**THE CHIEF EXECUTIVE OFFICER**

3<sup>rd</sup> Respondent

**THE KING'S OFFICE**

4<sup>th</sup> Respondent

**Neutral citation:** Timothy Dlamini and Another v Elshimi Ambro Ali T/A Saad Mohammed and 2 Others (371/2018 [2020] SZIC 64 (26 May 2020))

**Coram:** **S. NSIBANDE J.P.**

(Sitting with N.R. Manana and M.P. Dlamini Nominated Members of the Court)

**Date Heard:** 02 March 2020

**Date Delivered:** 26 May 2020

## JUDGMENT

[1] The Applicant approached the Court on a certificate of urgency on 30<sup>th</sup> August 2019 for an order in the following terms:

- “1. That dispensing with the Rules and manner of service provided for in terms of the Rules of Court, and enrolling the matter as one of urgency.*
- 2. Condoning the Applicant for non-compliance with the Rules of the Court.*
- 3. That an order be or is hereby issued directing the 4<sup>th</sup> Respondent to deduct a financial security of E151 306.00 (one hundred and fifty-one thousand three hundred and six Emalangeni from the account receivable of the 1<sup>st</sup> Respondent as security through the High Court of Eswatini account should the private dealings between 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents come to end by the month of August 2019 therein.*
- 4. That Rule Nisi do hereby issue returnable at the time and duration to be judiciously determined by the above Honourable Court calling upon 1<sup>st</sup> Respondent to show cause as to why an order in terms of pray 3 should not be made final by the Honourable Court in favour of the Applicants hereto.*
- 5. That granting the Applicants costs of suit of this application.*
- 6. That granting the Applicant further and/or alternative relief herein.”*

[2] Despite that the matter came on a certificate of urgency, the matter was postponed on numerous occasions and finally heard on 2<sup>nd</sup> March 2020. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents took issue with the application and submitted that the same

application had been brought by the Applicants against the same Respondents for the same order under case No. 82/2018 and that the matter had been dismissed. They called for the matter to be dismissed as it is res judicata.

[3] The Applicant explains that the Respondent in case 82/2018 had been improperly cited and thus he has now cited the Respondents properly. The Respondent in **82/2018** was **SAAD MOHAMMED SAAD GROUP**. The 1<sup>st</sup> Respondent in the current matter is **Elishimi Ambro Ali t/a SAAD MOHAMMED SAAD** and the 2<sup>nd</sup> Respondent is **ELISHIMI ROOMY**.

[4] It appears from a reading of the papers that the Applicants seek security for costs and seek an order directing and/or compelling the 3<sup>rd</sup>/or 4<sup>th</sup> Respondents to attach a sum of E151 306.00 from the account receivable of the 1<sup>st</sup> Respondent. They allege that there are private business dealings between 4<sup>th</sup> and 1<sup>st</sup> Respondents.

[5] A perusal of the Applicants founding affidavit reveals that it has not been attested to by a Commissioner of Oath. In the case of **Swart v Swart 1950 (1) SA 263 (0)** the Court, dealing with a similar defect in an affidavit stated that the Court has a discretion whether to allow or reject the affidavit and dismiss the matter. It further stated that grounds for the exercise of any discretion to condone the defect should be placed before the Court.

[6] In *casu* the Applicants placed no grounds for the exercise of the Courts discretion in their favour. We therefore dismiss the application without dealing with its merits or the points raised by the Respondent.

[7] We wish to point out that should the Applicants wish to file a fresh application they may do so. They need to be mindful though of the 4<sup>th</sup> Respondent's attorney's submissions. Although the 4<sup>th</sup> Respondent did not file any papers in opposition to the application, the said attorneys submitted that 3<sup>rd</sup> and 4<sup>th</sup> Respondent had no business whatsoever with the 1<sup>st</sup> or 2<sup>nd</sup> Respondent.

[8] In the circumstances we make the following order:

**(a) The application is dismissed.**

**(b) Each party to pay its own costs.**



**S. NSIBANDE**

**PRESIDENT OF THE INDUSTRIAL COURT**

**For Applicant:** Mr. M. Mabuza (Mabuza Labour Law & Associates)

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