SWAZILAND INDUSTRIAL COURT OF APPEAL

SWAZILAND NATIONAL ASSOCIATION OF TEACHERS

1st Appellant

SWAZILAND NURSES ASSOCIATION

2nd Appellant

vs

PRIME MINISTER

1st Respondent

COMMISSIONER OF POLICE

T Respondent

SWAZILAND GOVERNMENT

3rd Respondent

Civ. Appeal No. 18/2000

Coram Sapire, P

Matsebula, J

A Maphalala, J A

For Appellants

For Respondents

JUDGMENT

This is an appeal from a judgment of Justice Nkambule of the Industrial Court. The appellants who were the applicants in the proceedings in the court a quo brought an application as a matter of urgency for an order:

(a) declaring that the Prime Minister's purported banning of the meetings of the first applicant to be an unlawful contravention of Section 103 of the Industrial Relations Act 2000;

(b) Interdicting and restraining the respondents from interfering with and impeding the applicants and their members in their exercise of the rights conferred upon them by the Industrial Relations Act 2000;

(c) Interdicting and restraining the respondents from preventing the applicants and their members from organising and participating in lawful trade union meetings;

(d) Costs on the attorney and client scale.

The application arose in the wake of the contentious evictions from the Macetjeni and Ka-Mkhweli Areas on the 13 October 2000. As a result of these evictions a number of scholars were interrupted in their studies at schools in the area and the teachers concerned saw it as their duty to make protest on their pupils' behalf. A meeting took place on the 20th October. It is not necessary for this court to consider the details of what took place at this meeting and make any findings in regard thereto. What is important is that as a result of the frustration of their efforts the membership of SNAT resolved to hold a meeting on the 20th October 2000. Whether this was a private meeting or a public meeting is a matter for debate and it is not for this court to resolve that question either.

What gives rise to the present proceedings is that the Prime Minister on the 27th October 2000 issued and caused to be published a press statement in the following terms:

PRESS STATEMENT 16/2000

BY THE RIGHT HONOURABLE PRIME MINISTER DR. B. S. S.

DLAMINI

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ON THE PROPOSED MASS MEETINGS OF SNAT AND THE SFTU - 28 OCTOBER AND 29 OCTOBER RESPECTIVELY.

Government wishes to inform the Swaziland National Association of Teachers (SNAT) and the Swaziland Federation of Trade Unions (SFTU) that the public meetings proposed for 28 October and 29 October respectively will not be held.

No further meetings and decisions will be allowed until these organisations have held discussions with Government to clarify their domain in labour issues.

This instruction is given for the purpose of maintaining peace and stability and arises from Government's understanding that the discussions in those meetings will extend beyond the labour issues for which the respective organisations are mandated.

The Commissioner of Police will issue a media statement on the same issue and all members of the public are urged to give the Police and other security forces their full cooperation and support.

Office of the Prime Minister 27 October 2000 It is not clear from where Prime Minister derived the power to issue such a statement or to declare that the public meetings referred to therein would not take place. It later transpired that the Prime Minister relied on Section 3 paragraph 14 of the Police and Public Order Act No. 17 of 1963 as read with Section 3(10) (a)(ii) of the same Act to justify his action.

It is to this order which prayer (a) in the notice of application refers, (a) seeks an order declaring this document and this press statement to be an unlawful

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contravention of Section 103 of the Industrial relations Act 2000. Section 103 of the act reads as follows:-

"103. (1) A person holding a public office, or acting or purporting to act on behalf of anyone holding such office, shall not exercise any power conferred by or under any law in such a way as to impede the exercise of rights conferred or recognised by this Act. "

The point was made by the respondents both in the court a quo and in this court that the relief claimed under this section is incompetent as the Prime Minister does not occupy a public office nor was he acting

or purporting to act on behalf of anybody holding such office in making such press statement. In this connection reference was made to the definition of public officer, public service set out in Section 2 (1) of the interpretation act number 21 of 1970. Further reference was made to Section 144 of the constitution of Swaziland Act at 50 of 1968 and to the definition of public officer and public service therein.

The relief claimed by the applicants in prayer (a) was justifiable in the court a quo. In other words that court had jurisdiction to decide matters arising out of the provisions of the Industrial Relations Act.

Section 8(1) of the Industrial Relations Act 2000 reads as follows :-

"The Court shall, subject to sections 17 and 65, have exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of an application, claim or complaint or infringement of any of the provisions of this, the Employment Act, the Workmen's Compensation Act, or any other legislation which extends jurisdiction to the Court, or in respect of any matter which may arise at common law between an employer and employee in the course of employment or between an employer or employers' association and a trade union, or staff association or between an employees' association, a trade union, a staff association, a federation and a member thereof."

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The claim made in paragraph (a) of the Notice of Motion would clearly be a claim or complaint for infringement of any of the provisions of this (act).

As has been seen however, as the Prime Minister does not for these purposes occupy a public office the provisions of section 103 are not applicable and no declaration can be made as claimed by the appellants.

Mr. Dunseith who appeared for the appellants urged us despite the foregoing to declare the Prime Minister's action under the Public Order Act 17 of 1963 to be unlawful. Argument was addressed to us in this regard and while there may be consideration substance in the argument advanced it cannot be considered in this court as in the Industrial Court because the Prime Minister in acting under the provisions of that act did not do so.....employer. The dispute as to the lawfulness or otherwise of the Prime Minister's action is not a matter falling within the provisions of Section 8 of the Industrial relations Act. As both this court and the court a quo are creatures of statute their jurisdictions are limited to the terms of the statute by which they are created.

As far as the relief sought under (b) and (C) of the notice of motion is concerned here again the subject matter of the dispute does not fall within the jurisdiction of the court a quo and consequently this court too may not alter the judgment of the court a quo to afford the appellants' relief in terms of these two paragraphs.

The notice of appeal states the ground upon which the appellants have come to this court as follows:-

"1. The a quo erred in law finding that the Prime Minister was entitled to give a directive banning the appellants' meetings, and the Commissioner of Police was obliged to comply with such directive without exercising his own discretion, in terms of the provisions of Section 3(10)(a)(14) of the Public Order Act 17/1973, more particularly in that:

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1.1 the particular subsection 14 is one of the scheduled sections of the Act which do not apply unless brought into force by publication of a Government gazette;

1.2 the schedule sections have not been brought into force by gazette and do not apply;

1.3 Section 3(10)(a)(14) has no force or effect in law. "

As indicated there is a great deal of force in the point raised but for the reasons stated above it is not for the court a quo or this court to adjudicate on this question of law. The appellants have been properly advised to seek this form of relief in the High Court.

The court a quo was clearly wrong in finding that it had jurisdiction to entertain the matter other than in respect of claim (a) which, as we have seen, could not be granted. The justice in the court a quo should have found that he had no jurisdiction to entertain the claims at all and should not have made the order under section 8(4) of the Industrial Relations Act. Accordingly to this extent the appeal succeeds and the order made by the court a quo is set aside. The order of the court a quo is altered to reads: "Application dismissed."

SAPIRE, P

We concur

MATSEBULA, J A

MAPHALALA, J A