



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Civil Case 1265/2016

In the matter between:

CHARLES MYEZA

Applicant

And

MINISTER OF PUBLIC SERVICE

1st Respondent

PRIME MINISTER

2nd Respondent

JSC CHAIRPERSON

3rd Respondent

THE ATTORNEY GENERAL

4th Respondent

Neutral citation: *Charles Myeza vs Minister of Public Service and Three Others*
(1265/2016) [SZHC]128 (24th October 2016).

Coram: **S.B. MAPHALALA PJ**
M.D.MAMBA J
M. DLAMINI J

Heard: 4th October, 2016

Delivered: 24th October, 2016

For Applicant: Mr S. Gumedze
(of V.Z. Dlamini Attorneys)

For 1st, 2nd and 4th Respondents: Mr. Khumalo
Senior Crown Counsel
(at the Attorney General Chambers,

For 3rd Respondent: Mr .Z. Jele
(of Robinson Bertram)

Summary: Civil Procedure – *operation of section 145 (2) of the Constitution of Swaziland – Applicant contends that the said provision ought to be respected – 2nd Respondent filed a Notice of Application for leave to supplement – stating that the Supreme Court session in November shall commence – where Applicant’s case is one of the cases listed – in arguments before the court – attorney for the Applicant conceded that there are presently three Judges of the court as required by section 145 (2) of the Constitution – the Application therefore falls to be dismissed with out any further ado.*

JUDGMENT

(The Court)

The Application

[1] The Applicant one Charles Myeza a former Member of Parliament who is currently in detention at Bhalekane Prison Farm where he is serving a sentence of 5 (five years) after being convicted by the High Court of Swaziland has filed before this Court an Urgent Application filed before the Registrar of this Court on the 20th July, 2016 seeking the following orders:

- 1. That this Honourable Court dispense with the normal requirements relating to time limits, manner of service, form and procedure in applications proceedings and deal with this matter as one of urgency in terms of Rule6 (25) (a) and (b) of the High Court Rules.**
- 2. Declaring the act of the 1st Respondent's ministry of failing to provide posts of the Judicial Services Commission for the appointment of permanent Judges of the Supreme Court to be an act in violation of the Constitution.**
- 3. Directing the 1st and 2nd Respondents to within a period of seven (7) days provide the Judicial Services Commission with posts for the hiring of permanent Judges of the Supreme Court.**
- 4. Directing the 3rd Respondent to within a period of twenty-one working days after being provided with posts for permanent Judges of the Supreme Court to commence of process of hiring such Judges.**
- 5. That the 1st and 2nd Respondents be ordered to pay costs of this application; each paying to have the other absolved.**
- 6. That the Applicant be granted any further and / or alternative relief which this Honourable Court will deem just.**

[2] The Respondents oppose the Application and has filed an Answering Affidavit of one Mr Evert Madlopha who is the Principal Secretary in the Ministry of Public Service cited as the 1st Respondent represented by the Attorney General who is cited as the 4th Respondent.

[3] The 3rd Respondent namely, the Chairman of the Judicial Service Commission filed an Answering Affidavit of one Lungile Msimango who is the Secretary of the said Commission.

- [4] The Applicant in turn filed a Replying Affidavit in accordance with the Rules of this Court.

The Full Bench

- [5] On the 28th July, 2016 the learned Chief Justice constituted a Full bench to hear the matter as it touches on the provisions of the Constitution of Swaziland where **S.B. Maphalala P.J, M.D. Mamba J and M. Dlamini J** were empanelled to decide the constitutional question.

Notice of Application for leave to supplement

- [6] On the 4th October, 2016 the Application came before the said Full Bench of this Court where Attorney-General representing the 1st and 2nd Respondents had filed with the Registrar of this Court a Notice of Application for Leave to Supplement its papers. The said notice had not be served on the attorney for the Applicant who requested the court to adjourn the mater for a few minutes to take instructions from his client. Indeed the court granted the said adjournment.
- [7] The said notice stated **inter alia** at paragraph 2 thereof:

In the aftermath of the Court proceedings of 13 September 2016 which the matter was set to be argued on 4 October 2016, it has emerged that Honourable Chief Justice has determined that the Supreme Court will be sitting in its Second Session from 16 November to 16 December 2016. Applicant's matter has been allocated the 18th November 2016 for hearing, as shown on the annexed Notice (annexure A) and relevant pages of the Session roll (annexure B).

- [8] Annexure B lists the criminal review case of the Applicant as item 15 to be heard on the 18th November, 2016 in Court “A”.
- [9] When the matter was called after the adjournment the attorney for the Applicant contended that his client was of the view that the said Notice has no effect as it is common knowledge that the November session of the Supreme Court is not likely to proceed on account of the boycott by the Law Society of this country.
- [10] In view of this submission by the Applicant the court questioned the attorney as to whether there are not enough Judges of the Supreme Court in view of the fact the only Judge of the Supreme Court whose position was revoked was the Chief Justice, Michael Ramodibedi and rest of the Justices of the Supreme Court were still Judges of the Supreme Court of Swaziland until their revocation in accordance with the law. The tenure of the other members of the Supreme Court was never revoked.
- [11] It is common cause that in the last session of the Supreme Court the Honourable Chief Justice, Justice B.J. Odoki and Justice S.P. Dlamini were sitting in that Court. The attorney for the Applicant then conceded the point that in that case the Application falls to be dismissed.
- [12] The attorneys for the Respondents also made submissions. Firstly, the attorney for the Swaziland Government Mr Khumalo contended that 3rd Respondent being the Judicial Service Commission ought to have pursued their own Application as the Answering Affidavit of the Secretary supported the Applicant’s cause for all intent and purposes.

[13] Mr. Jele for the 3rd Respondent extensively advanced arguments in support of the Applicant's case. Firstly, it was not clear why 3rd Respondent decided to lean on the Applicant's Application instead of filing an application for joinder as 2nd Applicant. Secondly, the difficulty faced by Mr. Jele was that Counsel for the Applicant withdrew the prayers for the appointment of permanent Judges and contended that his client's only gripe was to have his appeal heard. It was immaterial whether permanent or *ad hoc* Judges were empanelled for his appeal. There were no basis in law to press on with the prayers for the appointment of permanent Judges. After all the Court is of the considered view that the matter for the appointment of permanent Judges is an administrative one to be resolved between the 3rd Respondent and the 1st Respondent's Ministry.

[14] After everything has been said and done first it is clear that the case of the Applicant has been enrolled in the November session of the Supreme Court to proceed on those dates set by the Registrar of that Court. Secondly we are of the considered view that there are presently at least three Judges of the Supreme Court as stated above in paragraph [11] of this judgment. Therefore this renders the present Application of no consequence.

[15] In the result, the Application is dismissed by this Court as conceded by the attorney for the Applicant.

[16] We further rule that each party to pay its own costs.

S.B. MAPHALALA P.J.

M.D. MAMBA J.

M. DLAMINI J.