IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO. 119/14**

In the matter between:

TQM TEXTILE SWAZILAND	Applicant
and	
MOTSA MAVUSO ATTORNEYS	1st Respondent
MUSA SUKATI	2nd Respondent
THE SHERIFF OF SWAZILAND	3rd Respondent
THE REGISTRAR OF THE INDUSTRIAL COURT OF SWAZILAND	4th Respondent
THE COMMISSIONER OF POLICE FOR SWAZILAND	5th Respondent

In Re:

SIFISO SIMELANE & 354 OTHERS	Applicants
And	
TQM TEXTILE SWAZILAND	Respondent

Neutral citation: *Sifiso Simelane & 354 Others v TQM Textile Swaziland (PTY) LTD (417/08) [2017] SZIC 55 (July , 2017)*

Coram: N. Nkonyane, J
(Sitting with G. Ndzinisa and S. Mvubu
Nominated Members of the Court)

Heard submissions : 28/06/17

Delivered judgement: 13/07/17

SUMMARY---Labour Law---Interpretation of Court's judgment---When is it allowed---Who may approach the Court---Principle of functus officio---Exceptions thereto.

Held---Any of the parties may, on notice to the other party, apply to the Court for an interpretation of its judgment in a suit between the parties. It is not necessary that the application should come before the same judge or judges who made the order, but it must be a Court of the same division.

RULING ON INTERPRETATION OF COURT'S JUDGMENT 13/07/17

1. This Court on 23rd July 2014 delivered a judgement which was in favour of the Applicants in the main application.

2. Despite the judgement having been delivered in July 2014, todate the Applicants have not all been paid the monies lawfully due to them in terms of the judgment of the Court.

3. The employer, who is the Applicant in these proceedings has now approached the Court under a certificate of urgency and is seeking an order in the following terms;

1. *Dispensing with the normal rules, in respect of form, time limits and service and hearing the matter urgently.*

2. *That a Rule Nisi returnable on a date to be set by the above Honourable Court calling upon the Respondents to show cause why;*

2.1 the 1st, 2nd, 3rd, and 5th Respondents should not be interdicted and restrained from executing a Writ issued out by the 4th Respondent at the instance of the 1st Respondent and dated 27th February, 2017;

2.2 the Writ issued out by the 4th Respondent in the above matter on the 27th February, 2017 should not be declared irregular, unlawful and set aside.

3. That order above operates as an Interim Interdict with immediate effect pending the return dates.

4. Awarding costs against the 1st and 2nd Respondents jointly and severally, the one paying the other to be absolved, on a scale as between attorney and client.

5. Granting of further and/or alternative relief.

4. When the application appeared before the Court, the Applicant applied for an amendment of the Notice of Motion by adding a further prayer to read as follow;

"Declaring the judgement under case number 119/14 to be inapplicable to the employees who were still in the employ of the Applicant at the date when the Agreement under case number 92/14 was made an Order of Court".

The amendment was granted and the application was to appear as so amended.

5. The essence of the amendment is that the Court is being asked to interpret its own judgement and clarify as to whom is the judgement applicable as far as the Applicants in the main application are concerned. The crux of the Applicant's argument is that the Court's judgment could not possibly be understood to be applicable to all the employees as some of them withdrew from the proceedings following

an agreement that was reached between the parties under case number 92/14 which was thereafter registered and made an order of the Court on 14th April 2014.

6. In paragraphs 3 and 4 of the Applicant's replying affidavit filed in Court on 26th June 2017, the deponent thereto, a certain Frank Feng, stated under Oath that;

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"In my submission, it is quite clear that the remaining 301 employees did not understand themselves as having been party to the proceedings under case number 119/14 because they had withdrawn from these proceedings following the settlement under case number 92/2014. I am informed that this has been admitted by the party's representative in open Court in argument."

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It is therefore clear that the judgement under case number 119/2014 could not have been issued in favour of the 301 employees who had themselves brought the same application for the same relief under a different case number."

The issue for the Court to clarify therefore is whether or not the judgement delivered on 23rd July 2014 is applicable to all 355 Applicants in the main application or to 355 employees minus the 301 employees who are said to have reached an agreement with the

employer (the current Applicant) to withdraw the legal proceedings that they had instituted against the employer.

6. It is not difficult to understand why the Applicant instituted the present legal proceedings on an urgent basis. The employees' representative has caused two Writs of Execution to be served on the employer. One is dated 24th August 2015, **Annexure FF5** of the Applicant's founding affidavit. In that document an amount of **E518, 797.74** is being demanded to satisfy *"the Judgement Debt in respect of **fifty dismissed employees** of the Respondent in terms of the Honourable Court judgement of the 23rs July 2014; Court order dated 11th June 2015 and the Court Order of the 3rd August 2015 besides your costs thereby incurred."*

7. The evidence reveals that the employer has already paid this amount by cheques which were made payable to Motsa Mavuso Attorneys. The Court was told that the reason for that was to have the money paid into a trust account which the employees' representative did not have as he is not a legal practitioner.

8. Again, on 27th February 2017 another Writ of Execution was issued for the sum of **E3, 543,414.64** for the "*Judgement Debt in respect of **fifty dismissed employees** of the Respondent in terms of the Honourable Court Judgement of the 23rd July 2014; Court Order dated 11th June 2015, besides your costs there by incurred."* This document is **Annexure FF10** of the founding affidavit. The employer took the position that it cannot be made to pay the same people twice.

9. During the arguments in Court the employees' representative conceded that the second Writ of Execution was badly drafted and was therefore irregular. The employee's representative accordingly conceded to prayer 2.2 being granted by the Court.

10. What now remains for the Court to do is to clarify or interpret the judgement regarding the number of employees that it is applicable to. Dealing with inherent power of the Court to supplement, clarify or correct its own judgement the Learned Authors, **Herbstein and Van Winsen; <u>The Civil Practice of the Supreme Court of South Africa</u>, 4th edition** stated the following at page 686;

"The general principle, now well established in our law, is that once a Court had duly pronounced a final judgement or order, it has itself no authority to correct, alter or supplement it. The reason is that the Court thereupon becomes functus officio: its jurisdiction in the case having been fully and finally exercised its authority over the subject matter ceases. There are, however, a few exceptions to that rule…. provided that the Court is approached within a reasonable time…..it may correct, alter or supplement it in one or more of the following cases…."

In casu, the judgement of the Court was delivered on the23rd July 2014. The employer did not approach the Court to interpret the judgement. Instead, the employer launched review proceedings before the High Court, the application was dismissed by the High Court. The employer thereafter filed an appeal before the Industrial

Court of Appeal. The appeal was dismissed, albeit, on technical grounds.

11. The main application between the parties was based on affidavits' filed by both parties. During the pleading stage and during the arguments, none of the parties raised any issue about the citation of the parties. The pleadings filed of record show that at some point when the employees were represented by Sipho Manana, there was an application to amend. (See **Annexure "TQM4"** of the Applicant's replying affidavit). It is stated in that document under paragraph 4 under the heading **"Reason of Amending"** that:

"The reason to amend the citation of the application is that the 304 employees who are still employed are having negotiations with the employer about the same issue, therefore hurrying to this Hounarable Court when the matter is still being discussed at the company level will be acting in bad faith. Respondent had made it clear that he is not prepared to discuss anything about those who are dismissed."

When the main application was still serving before the Court, there was no objection raised by the employer that the dismissed employees were not entitled to bring their matter of the underpayment without first obtaining a certificate of unresolved dispute from Conciliation Mediation and Arbitration Commission (CMAC).

12. When the negotiations between the employer and the 304 employees failed, the 304 employees returned to Court without going through the formalities of filing an application. Instead their representative applied in open Court. There was no objection by the Employer (the current Applicant). That was why the Court in paragraph 1 of its judgement dated 23rd July 2014 stated clearly that ;

> *"1. Some of the Applicants are former employees of the Respondent. Three hundred and four of the Applicants are still employed by the Respondent. The Applicant and the fifty others were dismissed by the Respondent on 15th October 2013 for allegedly engaging in an unlawful strike action at the workplace."*

13. At all material times when the main application was serving before the Court there was never any question as to who were the Applicants that were before the Court. There can be no question therefore as to whom is the judgement applicable. The judgement is applicable to all the employees mentioned in paragraph 1 of the Court's judgement delivered on 23rd July 2014.

14. Taking into account all the foregoing observations, the interests of justice, fairness and equity the Court will make the following order;

a) The Rule nisi issued in terms of prayer 2.1 is confirmed.
b) Order in terms of prayer 2.2 is granted.

c) *The judgement of the Court delivered on 23rd July, 2014 is applicable to all the employees mentioned in paragraph 1 of that Court's judgement.*

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

15. The members are in agreement.

N.NKONYANE

JUDGE OF THE INDUSTRIAL COURT OF SWAZILAND

For Applicant : *Mr. L. Mamba*

(Attorney at L.R. Mamba & Associates)

For The Intervening Parties: *Mr. A. Fakudze*

(Labour Law Consultant)