



**IN THE INDUSTRIAL COURT OF ESWATINI**

**RULING**

Case No. 15/19

In the matter between:

**MINISTER OF LABOUR**

1<sup>st</sup> Applicant

**P.S. MINISTRY OF PUBLIC SERVICES**

2<sup>nd</sup> Applicant

And

**NATIONAL PUBLIC SERVICES AND**

**ALLIED WORKERS UNION (NAPSAWU)**

1<sup>st</sup> Respondent

**SWAZILAND NATIONAL ASSOCIATION OF**

**TEACHERS**

2<sup>nd</sup> Respondent

**SWAZILAND NATIONAL ASSOCIATION OF**

**GOVERNMENT**

**ACCOUNTING PERSONNEL**

3<sup>rd</sup> Respondent

**Neutral citation:** Minister of Labour & Social Security and Another V National Public Service and Allied Workers Union and 2 Others (15/2019) [2019] SZIC 24 (25 March 2018)

**Coram:** S. NSIBANDE JP

(Sitting with Nominated Members of the Court Mr M. Mtetwa and Mr M. Dlamini)

**Heard:** 15 March 2019

**Delivered:** 25 March 2019

**Summary – Application for postponement – Applicant applying for postponement of matter because of inability to pay cost of living adjustment.**

**HELD – Court to discretion to grant application.**

**HELD – Application for postponement tantamount to interdicting industrial action by Respondents - Interests of justice not in favour of postponement but in favour of finalising main application.**

**HELD – Application for postponement refused.**

### **RULING**

[1] The Respondents sought to embark on strike action following the unresolved dispute with the Government of Eswatini pertaining to its failure to make any cost of living adjustments for the members of the Respondent employed by the Government of Eswatini for 2017 and 2018.

- [2] On 27<sup>th</sup> January 2019, the Applicants brought an urgent application to Court, seeking amongst other things to interdict and restrain the Respondents from embarking on strike action or any industrial action scheduled for 28<sup>th</sup> January 2019 at the instance of the Respondents.
- [3] The application was opposed by all four (4) Respondents initially. At the hearing of the matter the 4<sup>th</sup> Respondent indicated that it had no intention of taking part in the strike. After hearing the argument of the parties, the Court issued an interim order interdicting the strike that was intended for 28<sup>th</sup> January, in terms of **Section 90 of the Industrial Relations Act 2000 as amended**. The strike was interdicted pending the determination of a constitutional question raised by the Respondents and while the matter was pending before the High Court.
- [4] The Respondents subsequently abandoned the order referring the constitutional question to the High Court by serving a Notice of abandonment dated 21<sup>st</sup> February 2019, the result of which was that the matter brought on a certificate of urgency on 27<sup>th</sup> January 2019 would have to be heard in this Court.
- [5] The matter was set down for hearing on 15<sup>th</sup> March 2019 but before that date the Applicant filed two interlocutory applications, the first, launched on 12<sup>th</sup> March 2019 being an application for costs allegedly occasioned by Respondent's action

of abandoning the Constitutional Question they had raised and the 2<sup>nd</sup> being an application for the postponement of the main application to 15<sup>th</sup> May 2020. It is the 2<sup>nd</sup> Interlocutory application that this ruling is concerned with.

[6] The application for postponement is opposed and the Respondents filed their opposing affidavits to which the Applicants replied. The matter then came before us on the 15<sup>th</sup> March 2019 for argument.

[7] The Applicants' basis for the application for postponement is found in paragraphs 14 of the Founding Affidavit in which the Minister of Labour and Social Security states the following:-

*“The purpose of a strike in terms of Section 2 of the Industrial Relations Act is to induce compliance to a demand. At this point the strike will be inconsequential since you can not compel anyone to do the impossible and in this matter the government (sic) current fiscal position does not allow for the payment of the COLA.”*

[8] In argument; the Applicants took a similar line of argument submitting that whichever party was successful in the main application, there could be no winner in that:

- (i) if applicant was successful in interdicting the strike, Respondents would be entitled to start the process leading to industrial action anew.
- (ii) if the Respondents were successful then they would proceed to industrial action which would however, yield no result for the reason that the government of Eswatini does not have the money to fund a Cost of Living Adjustment (COLA).

[9] The Applicants' acknowledge that the COLA was outstanding and that it would have to be paid but submitted that until the new executive had an opportunity to put the country's finances back in order, it was impossible for the COLA to be paid as they currently have no funds to do so. That, in essence was the Applicants' submissions.

[10] The Respondents on the other hand acknowledged the Applicants' predicament but insisted that the Applicants had failed to satisfy certain elements necessary to be satisfied when a postponement was sought; whether the application has been timeously made; whether the explanation given was satisfactory, whether there is prejudice to any of the parties and whether the application is opposed. The Court is expected to weigh all these factors to determine whether it is in the interests of justice to grant the postponement. The Respondents argued that what the

Applicants' sought was not a postponement but a deferment of the matter to allow them to recover financially. It was argued that a lack of money was not a reason for postponing a matter.

[11] It is correct that the elements set out by the Respondent must be met by an applicant before the Court can decide on whether or not to grant postponement. The listed factors once weighed will enable the Court to determine whether it is on the interests of justice to grant the postponement or not.

**National Police Service Union and 2 Others v The Minister of Safety and Security and 3 Others (CCT 21/00) 2000 ZACC 15:2000 (4) SA 1100:**

[12] We have considered the factors listed in the above case and while the Attorney General made spirited submissions in support of his application, it appears to us that the application is misdirected. The primary reason for the application is not to enable the Applicants to prepare and be ready to present their case at a later date but to delay the final outcome of the main application on the basis that whatever that outcome is, there will either be no point to the strike action (on account of Government's inability to provide the COLA or there will be further attempts to press for the COLA through strike action again. It appears to us that the application for a postponement is an attempt to interdict the contemplated strike action and any future strike action that involves the parties and the

2017/2018 COLA issue, without actually making a direct application in that regard.

[13] In our view, it is not in the interests of justice to grant the postponement. The **Industrial Relations Act 2000 as amended** gives employees the right to organise, in terms of Part IV of the Act. It also allows a party to a dispute to take a lawful strike if a dispute has been certified as an unresolved dispute under **Section 81(5), and the provisions of Section 86 have been complied with.** The right to take part in union activity is enshrined in chapter III of the Constitution of the Kingdom of Eswatini. It is the duty of this Court to protect that right within the confines of the law.

[14] The Respondents are in possession of a certificate of unresolved dispute and have complied with the provisions of **Section 86 of the Industrial Relations Act.** In our view the interest of justice favour that the main application be heard so as to settle the question of the rights of the parties in respect of **Section 89 and 90 of the Industrial Relations Act.**

[15] In the circumstances, the application for a postponement is dismissed. Costs will be costs in the course.

The members agree.



**S. NSIBANDE**

**PRESIDENT OF THE INDUSTRIAL COURT**

**For the Applicants:** Mr S.M. Khumalo with

Mr M. Simelane

Mr. N. G. Dlamini

**For the Respondents:** Mr L. Howe