IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 1356/2008

SIKHATSIDLAMINI AND 10 OTHERS	**Applicants**
In Re:	
THE MUNICIPAL COUNCIL OF MBABANE	**1st Applicant**
FELIX MATSEBULA	**2nd Applicant**
ZEPHANIAH NKAMBULE	**3rd Applicant**
BENEDICT BENNETT	**4th Applicant**
And **THE CHAIRMAN OF THE COMMISSION OF ENQUIRY INTO THE OPERATIONS OF THE MUNICIPAL COUNCIL OF MBABANE**	**1st Respondent**
THE HONOURABLE MINISTER FOR HOUSING AND URBAN DEVELOPMENT	**2nd Respondent**
ATTORNEY GENERAL	**3rd Respondent**
WALTER BENNETT	**4th Respondent**
JABU MABUZA	**5th Respondent**
LOMCEBO DLAMINI	**6th Respondent**
PETROS MBHAMALI	7th **Respondent**
THOM BAYLY	**8th Respondent**
JOSEPH NDLANGAMANDLA	9th **Respondent**
LOMALANGENI KUNENE	**10th Respondent**

Coram: S.B. MAPHALALA – J

For the Applicants: MR. N. HLOPHE with MR. M. MAGAGULA and MR M. MKHWANAZI

For the Respondents: MR. V. KUNENE with MR M.VILAKATI both Crown Counsel in the Attorney General's Chambers.

For the Interim Counsel: MR. S. MDLADLA

JUDGMENT

19th June 2008

Introduction

[1] The urgent application before court stands to be decided on the principle of law expressed in the landmark decision in South Africa in the matter of *Administrator Transvaal and Others vs Traub and others 1989 (4) S.A. 731 (A) at 748 (G - H)* where Corbett CJ stated the following principle:

> "The maxim expresses a principle of natural justice which is part of our law. The classic formulations of the principle state that when a statute empowers a public official or body to give a decision prejudicially affecting an individual in his liberty or property or existing rights, the latter has a right to be heard before the decision is taken (or in some instances thereafter) unless the statute expressly or by implication indicates the contrary".

The application.

[2] The second application is the application for determination by the court. The application seeks an order as follows:

(a) Dispensing with the normal provisions of the Rules of this Honourable Court as relates to form, service and time limits and to hear this matter as an urgent one;

(b) Setting aside or interdicting implementation of the Ministerial Order dissolving the Council of Mbabane pending the finalization of the main application herein, alternatively;

(c) Directing the 2nd Respondent to restore the ***status quo ante*** existing prior to his issuing the Ministerial Order referred to above, alternatively;

(d) Granting such order that this Honourable Court deems fit to protect the ***status quo ante*** existing prior to the Minister issuing the order referred to above;

(e) Granting Applicants the costs of this matter at attorney-client scale;

(f) Granting Applicants any further or alternative relief as the case may be.

A short history

[3] The summary of the facts of the dispute is outlined in the judgment of this court of the 30th April 2008, and for ease of reference that judgment is incorporated to this one. The Applicants are Counselors of the Municipal Council of Mbabane. The 1st Respondent is the Chairman of the Commission of Enquiry into the affairs of the Municipal Council of Mbabane who is in terms of Rule 53 of the High Court, is a proper Respondent in matters of this nature. The 2nd Respondent is the Minister of Housing and Urban Development, cited herein in his capacity as the officer who established the Commission of Enquiry.

[4] Sometime in February 2007, the 2nd Respondent established a Commission of Enquiry into the affairs of the Municipal Council of Mbabane by means of Government Gazette annexed "CM". The members of the said Commission appear *ex facie* the said Gazette.

[5] This court on the 30 April 2008, *inter alia*, ruled that the Interim Councilors be joined in the application and they are now presently before court. The Applicants are elected councilors of the Mbabane Municipal Council who were dismissed by the Minister for Housing and Urban Development on the grounds that they defied his order to implement recommendations of a Commission of Enquiry report. The said order was issued in terms

of Section 107 (3) of the Urban Government Act (hereinafter referred to as "The Act"). The Interim Councilors were appointed by the Honourable Minister in their positions, thus the tug of war.

The preliminary point by Interim Councilors.

[6] As stated earlier in this judgment the Interim Councilors have joined the fray, as it were and have filed their opposing affidavit deposed to by the Mayor one Mr. Walter Bennett. In this said affidavit a point *in limine* is raised as well as the merits of the matter. On the merits of the case the Interim Councilors support the position by the Minister who has in fact filed a supporting affidavit to their cause. The point *in limine* by the Interim Councilors is that the Applicants have served the Respondents with a Replying affidavit which raises a new cause of action. The court is referred to, *inter alia,* paragraph 11.2 where the Applicants aver **"that he did not apply his mind at all to the issues before him".** This, it is contended by the Interim Councilors that is a new ground for the application and therefore should have been stated in the Founding affidavit. It is trite law that an Applicant cannot introduce a new cause of action in its replies.

[7] I must also mention that the Government also raised the same arguments when this application was initially argued that in their replying affidavit the Applicants change tack. They allege that the hearings, referred to in the Minister's opposing affidavit, were a sham and that the Minister addressed them in derogatory language. Authority is legion for the proposition that an Applicant stands or falls by his Founding Affidavit. Therefore, it is impermissible for the Applicants to change their version in the replying affidavit. What is more, in oral argument the Applicant's Counsel sought to widen the issues in dispute by

suggesting, among other things, that the jurisdictional facts for the existence of the ministerial power or dissolution were absent and that the Minister acted irrationally. These contentions are not in the Founding Affidavit and hence are irrelevant.

[8] In his supplementary Heads of Arguments Counsel for the Interim Councilors cited the textbook by *Peter Van Blerk, Legal Drafting Civil Proceedings* at pages *69* where the following is stated:

> "The replying affidavits of an Applicant constitutes the response to the Respondent's answering affidavit. The first limitation that attached to a replying arises from the rule that the Applicant is the quiet to make out its case in its founding papers. The introduction of new matter, as opposed to replies can answer is not permitted. The respond is at liberty to apply to have it struck out or to seek leave to answer it in a further set of affidavit". The writer continues to State that "if the court, in the interest of justice, refuses to order that the matter be struck out, but instead gives the Respondent the opportunity to respond to it, the Applicant may gain advantage where the Respondent in unable to produce and effective response to the allegations".

[9] Further in arguments before court Counsel for the Interim Councilors contended that as can be seen from the replying affidavit, the Applicants make no effort, whatsoever to deal with the contents of the Respondents' affidavit *ad seriatim.* Instead, the Applicant went on a tangent of their own and made out a new case and do not even deny or respond to the allegations made by the Respondent in their answering affidavit which is fatal to the case of the Applicants as the averments by the Respondents' stand unchallenged. In this regard the court was referred to the case of *Susan Myzo Magagula vs The Editor Times Sunday and three others - Civil Case No. 1727/2007* and that what should be noted is that in the present case failure to apply ones mind is a different cause of action from that of failure to

give a hearing.

[10] In argument it was contended for the Applicants that what is stated by the Respondents is not correct and therefore their arguments should be rejected as the position of the Applicant was endorsed by this court in its earlier judgment on the points *in limine*. It would appear to me that the proof of the pudding would be in the eating. It is of paramount importance therefore to examine these affidavits themselves against the principles of law cited by the Respondents. I must further put it on record that I never in my judgment did I make a ruling on what cause of action the Applicants had advanced. The court at that stage was dealing with preliminary objections raised by the Respondents.

[11] The case for the Applicants is found in paragraphs 6 to 11 of the Founding Affidavit and for ease of reference these paragraphs are outlined hereinunder as follows:

(g) After preparing and serving the application upon the 3rd and 2nd Respondents, I was advised by the Applicants' attorney Nkululeko Hlophe that he had been told by the Principal Secretary in the 2nd Respondent's Ministry that Council had already been dissolved and this was around 9.50am today. Neither myself nor my fellow colleagues had been informed of this decision by the 2nd Respondent.

(h) The order by the 2nd Respondent is drastic, has far reaching consequences and seeks to defeat the will of the people of Mbabane who only elected me and my colleagues in November 2007. Before the 2nd Respondent issued the said order we had not committed any wrong deserving of being dismissed. **I** refer in this regard to the grounds set out in the main application. It suffices to state that neither me nor any of my colleagues Councilors were given charges nor confronted with allegations of any wrong doing.

(i) In the circumstances, before issuing the order aforesaid none of the Applicants were given a hearing. This failure to give a hearing is inconsistent with the Bill of Rights in the

Constitution particularly Section 33 thereof which obliges an Administrative Authority to give a person appearing before it a hearing and to treat such a person justly and fairly including observing the requirements of natural justice or fairness including giving such person the right to approach court and challenge a decision taken against him with which he is aggrieved.

(j) It is my humble submission that the 2nd Respondent's order referred to above was issued arbitrarily without the Applicants having been heard and is unjustly and unfair contrary to the Constitutional provision referred to above.

(k) It is further my submission that by proceeding with the matter in the manner he did the 2nd Respondent acted in bad faith in so far he was aware of the reasons for not implementing the directive referred to and had all along understood the position of the Applicants whom he gave a legitimate expectation that he would not put into effect the provisions of Section 107 (4) (b) of the Urban Government Act. It is submitted that given the stance that the 2nd Respondent had taken of accommodating the Applicants non implementation of his order gave them a right which he is not entitled to remove willy-nilly and was expected, in keeping with the provisions of the Constitution of the Kingdom of Swaziland to firstly give them a hearing or put them to terms before he could resort to the drastic measure he has taken by dissolving Council.

(l) In the circumstances I submit that the 2nd Respondent's order be reviewed, corrected and set aside for his failure to afford them a hearing. I alternatively submit that the Applicants are entitled to an order interdicting the implementation of the 2nd Respondent's order referred to on the same grounds cited above. **I** pray that in the circumstances of this matter the interdict prayed for operates with immediate and interim effect pending finalization of the main application Case no. 1356/08.

[12] The Respondents have contended that the court is referred, *inter alia*, to paragraph 11.2 where the Applicants aver **"that he did not apply his mind at all to all the issues**

before him", this is a new ground for the application and therefore should have been stated in the Founding Affidavit.

[13] Having considered the arguments of the parties in this regard I have come to the considered view that the position by the Applicants is correct that no new cause of action has been introduced in the replying affidavit. For example on the above-cited paragraph 11.2 is not different to paragraph 9 of the Founding Affidavit which states that **"it is my humble submission that the** 2nd **Respondent's order referred to above was issued arbitrarily without Applicants having been heard and is unjustly (sic) and unfair contrary to the constitutionally provision referred to above".** In the totality of the affidavits filed in this case I cannot say that the replying affidavit has introduced a new cause of action because in the Founding Affidavit at paragraph 8 thereof the case for the Applicants is canvassed that **"in the circumstances, before issuing the order aforesaid none of the Applicants were given a hearing. This failure to give a hearing is inconsistent with the Bill of Rights in the Constitution particularly Section** 33 **thereof which obliges an administrative authority to give a person appearing before it a hearing and to treat such a person justly and fairly including observing the requirements of natural justice or fairness including giving such person the right to approach court and challenge a decision taken against him with which he is aggrieved".**

[14] I must state that the above-cited paragraph 8 of the Founding Affidavit is the case that was argued at length by all Counsel in this case on the merits of the case. Therefore, I have come to the considered view that the preliminary point raised by the Respondents has no

merit and therefore it is dismissed forthwith. In any event I intend to only traverse the arguments on a fair hearing and will ignore the other heads objected to by the Respondents.

Arguments on the merits.

[15] The crux of the Applicants' case before this court is that the Minister contravened the Applicants' right to a fair hearing. It has been held that the failure to grant a hearing is so serious that a court will intervene where a decision was taken without affording a hearing. In this regard the court was referred to the Supreme Court case of *Swaziland Federation of Trade Unions vs The President of the Industrial Court and Another -Appeal Case No. 11/97* where the court discusses the *audi alteram partem* rule and its significance in our jurisprudence.

[16] According to the Applicants the exercise of the power by the Minister was not in accordance with the requirements of Section 33 (1) and (2) of the Constitution of Swaziland which sets parameters for lawful administrative action and confers rights upon persons aggrieved by an administrative action **to apply to a court of law in respect of any decision taken against that person with which that person is aggrieved.**

[17] It is on this basis that if the Minister's decision is found not to be compliant with the requirements of Section 33 of the Constitution, it must be declared unconstitutional. Section 33 must be interpreted broadly, in accordance with the principles governing interpretation of constitutional enactments which advocate for a broad and generous approach to be adopted in interpreting constitutional provisions. In this regard the court was referred to the leading case in the Botswana Court of Appeal decision in the case of *Attorney General vs Dow 1992 B.L.R. 119.* According to the Applicants' argument the

provisions of Section 33 were intended by the framers of the Constitution to cover ministerial action such as the one *in casu.* It would be untenable to contend that this section was intended only to cover actions of administrations and exclude the actions of a Minister who on a daily basis perform a variety of administrative acts and act as an administrative authority.

[18] The Applicants continue to argue that in executing his functions under Section 107, the Minister performs an act of an administrative nature. In this regard the court was referred to the discussion on administrative powers and ministerial acts by *Jourbert Law of South Africa, First Re:issue (1)* at pages *39 - 86.* The court was further referred to the decision of the Supreme Court of Appeal in the case of *Gamevest (Pty) Ltd vs Regional Land Claims Commissioner, Northern Province and Mpumalanga and others 2003 (1) S.A. 373 SCA* which discusses the right to administrative justice under Section 33 of the South African Constitution.

[19] The arguments of the Applicants are clearly outlined in the Heads of Arguments of the Applicants' Counsel at paragraph 21 to 28 to the general proposition that Section 107 is unconstitutional or at the very least should not be construed to give the Minister the power he has purported to exercise in that Section 56 of the Constitution gives the general objectives of the directive principles of state policy provides that the directive principles of state policy contained in Chapter 5 shall guide all organs and agencies of state in applying or interpreting the Constitution or any other law and in taking and implementing any policy decisions, for the establishment of a just, free and democratic society. That the political objectives as set out in Section 58 (1) and (2) provides that

Swaziland is a democratic country dedicated to principles which empower and encourage

the active participation of all citizens at all levels in their own governance.

[20] The Applicants further rely on paragraph 16.1 of their Founding Affidavit to canvass the point that they were not granted a fair hearing in the following terms:

> "16.1 That the Council has brazenly refused to implement the Ministerial Order. In fact the 2nd Respondent himself understood and accepted the reasons for not implementing the order which are merely that the finding and recommendations of the said order are illegal. In this regard the 2nd Respondent engaged the Applicants in circumstances that gave rise to a legitimate expectation. Furthermore by entertaining Council and agreeing to the postponement of the implementation of the said order up until yesterday the 14th April 2008, the 2nd Respondent acquiesced to the non implementation of the said order and cannot now seek to abandon that position without firstly notifying the Applicants and giving them a fair hearing."

[21] The general argument of the Applicants is that they were not afforded a hearing as required by Section 33 of the Constitution of this country. Such that only two of them being the Mayor and the Deputy Mayor appeared before the Minister on this issue and were only heard for not more than ten (10) minutes. They say in their affidavits that some unpalatable verbal exchange took place between them and the Honourable Minister. Therefore this cannot be said to be a proper hearing as envisaged by the said Section of the Constitution.

[22] The Applicants in argument referred to a plethora of decided cases here in Swaziland and in South Africa to buttress the above-cited arguments in the preceding

paragraphs. These included the Appeal Court decision in the matter of *Swaziland Federation of Trade Unions VS President of the Industrial Court of Swaziland Case No. 11/1997, Ampofo and Others vs MEC for Education, Arts, Culture, Sport and Recreation, Northern Province and Another 2002 (2) S.A. 215 (T), Bongota vs Minister of Correctional Services and Others 2002 (6) S.A. 330 (TKH), Meyer vs Iscor Pension Fund 2003 (2) S.A. 715 (SCA), Radio Pretoria vs Chairman, Independent Communications Authority of South Africa and Another 2003 (2) S.A. 451 (T), Chairman, Board on tariffs and Trade and Others vs Brenco Inc and Others 2001 (4) S.A. 511 (SCA).*

[23] Counsel for the 4th Applicant also presented arguments for his client and he aligned himself with the arguments advanced for the other Applicants.

[24] The arguments for the Swaziland Government were advanced when the matter initially appeared before this court and are addressed in the earlier judgment of this court. For ease of reference the judgment of the court that I have referred to earlier set out the case for the Government.

[25] For the Interim Councilors the general argument advanced on their behalf by *Mr. Mdladla* is that the Applicants' allege that **"they were not given charges nor confronted with allegations of any wrongdoing".** This court is referred to paragraphs 7, 8, and 9 of the Founding Affidavit. That is the gravamen of their case. The Respondents deny that Applicants were not given a hearing as contemplated by the Constitution. The 2nd Respondent engaged the Applicants and the reasons given for a failure to implement were not accepted, that is another issue. The nature of the case at hand did not warrant the preferring of charges, neither is there such a requirement by the empowering act.

[26] It is contended for the Interim Councilors that the constitutional right to procedural fairness, like the principles of a natural justice is flexible and supple. In this regard the court was referred to the textbook, *Administrative Law under the 1996 Constitution, 3rd Edition, Yvonne Burns et al.* In the case of *Chairman, Board on Tariffs and Trade vs Brenco Inc. 2001 (4) S.A. 522.* The Supreme Court of Appeal said that:

> "There is no single set of principles giving effect to the rules of natural justice which apply to all investigation enquiries and exercise of power, regardless of their nature. On the contrary, the court has recognized the need for the flexibility in the application of the principles of fairness in a range of different context".

[27] Counsel for the Interim Councilors also cited the case of *Bongota vs Minister of Correctional Services (supra)* where the court said that the requirements of procedural fairness are not rigid but are flexibly applied to each case. The procedure followed in a court of law is not a *sine quan non* for the application of procedural fairness.

[28] It is the submission of the Respondents further that the engagements referred to by the Applicants suffice given that the 2nd Respondent is the implementer of policy. The court has to strike a balance between the state's duty to give effect to procedural fairness and the promotion of an efficient administration. In *Premier Mpumalanga vs Executive*

Committee 1999 (2) BCLR the court held that **"in determining what constitutes procedural fairness in a given case, a court should be slow to impose obligations upon Government which will inhibit its ability to make and implement policy effectively".** The procedure must therefore not only be fair to the holder of the right affected by the administrative action, but also to the executive administration acting in the public interest. In this regard the court was referred to *Administrative Law under the 1996 Constitution* at *page 332.*

[29] It is further contended for the Interim Councilors that within the rubric of administrative law there will be instances where an administrator reaches a decision even without the presence of the individual affected, at certain instances written submissions are enough. This is particularly so where the manner of presentation is not stipulated nor is there a suggestion that Applicants' should be present. In this regard the court was referred to the South African case of *Huisman vs Minister of Local Government, Housing and Works 1996 (1) S.A. 836.* Furthermore, that it is trite law that the law does not demand an oral hearing at all times. The exigencies of each situation determine the forum or content of the *audi* to be preferred. In this regard the court was referred to the case of *Radio Pretoria vs Chairman Independent Communications Authority of South Africa and Another 2003 (5) S.A.*

[30] Counsel for the Interim Councilors further dealt with the doctrine of legitimate expectation to the general proposition that whether or not a legitimate expectation exists is a factual question and must be answered and

determined with reference to the

circumstances and facts of each case. Counsel for the Interim Councilors also cited what is stated in the case of *Ampofo vs Member of the Executive Committee (supra)* to the general proposition that a legitimate expectation does not exist where the expectation relates to preventing the administrator from discharging a statutory duty neither can someone have a legitimate expectation of doing something contrary to law.

[31] The final salvo by Counsel for the Interim Councilors is that *in casu* as can be read from Section 107 (3) (a) of the Urban Government Act No. 8 of 1969, it was mandatory for the Applicants to implement without delay. The Act says **shall** failure to act means an irregularity.

[32] The above are the general arguments of the parties in this very important case. I shall proceed hereinunder to assess the merits of the parties' arguments against the statute in question in the context of the Constitution of Swaziland. The Applicants contend that the Minister acted willy-nilly and did not afford them a hearing in terms of the law. On the other hand the Respondents contend that the Act does not require that the Minister affords such a hearing. Indeed, this is a vexed question I need to address.

The court's determination of the merits of the case.

[33] This case revolves around Section 107 (4) (b) of the Urban Government Act and Section 33 of the Constitution of Swaziland. It is therefore important to outline these enactments for a better understanding of the issue before the court.

Section 107 (4) of the Urban Government Act provides as follows:

> (4) The Minister may, pending the report of the commission, or if a Council fails to comply with the terms of an order made by him under subsection (3) (a), in addition to any other powers conferred upon him under this Act-
>
> (m) suspend the exercise by the Council of any of the powers conferred upon it by this Act or any other law for such period as he may think fit; or
>
> (n) dissolve the Council and, in his discretion, appoint or direct the election of new Councilors;
>
> and during such period, or, as the case may be, pending the appointment or election of new Councilors, confer upon any person or persons the right to exercise any powers so suspended or the powers of the Council so dissolved.

Section 33 of the Constitution of Swaziland states the following:

> 33. (1) A person appearing before any administrative authority has a right to be heard and to be treated justly and fairly in accordance with the requirements imposed by law including the requirements of fundamental justice or fairness and has a right to apply to a court of law in respect of any decision taken against that person with which that person is aggrieved. (2) A person appearing before any administrative authority has a right to be given reasons in writing for the decision of that authority.

[36] As we have seen in the arguments of the parties that the Applicants contend that the operations of Section 107 (4) should be viewed within the context of Section 33 of the Constitution. That because Section 107 (4) is inconsistent with the Constitution it ought to be struck down. The Respondents on the other hand contend that Section 107 (4) does not require that the Minister hears the other side. In this regard the court was referred to the South African case of *Huisman vs Minister of Local Government, Housing and Works (supra)* to the proposition that there will be instances where an administrator reaches a decision even without the presence of the individual affected, at certain instances written submissions are enough. This is particularly so where the manner of presentation is not stipulated nor is there a suggestion that Applicant should be present. Furthermore, the court was referred to the case of *Radio Pretoria vs Chairman Independent Communications Authority of South Africa (supra)* to the trite law principle that the law does not demand an oral hearing at all times. The exigencies of each situation determine the forum or context of the *audi* to be preferred. I am in respectful agreement with this statement of the law that indeed the exigencies of each situation determine the form or context of the *audi* to be preferred.

[37] In the present case the deposed Councilors were legally elected by the people of Mbabane through the ballot in that they represented the simple folk of Mbabane Municipal area. Therefore it was important for the Honourable Minister to have given then a fair hearing and even hear each one of them individually and not be satisfied in hearing two of them for not more than ten (10) minutes. I do not think that in the circumstances of the case it was prudent to treat them as a corporate entity regard to be had to their origin. It was essential that they were heard individually to explain their difficulties in implementing the

Commission of Enquiry Report. The logistics of putting that into operation are not difficult. I say so because if that was done this dispute would not have arisen.

[39] In this regard I agree with the legal principle that the failure to grant a hearing is so serious that a court will intervene where a decision was taken without affording a hearing. In this regard I find the *dictum* in the Appeal Court case of *Swaziland Federation of Trade Unions vs President of the Industrial Court (supra)* apposite.

[40] Furthermore, this country is governed by a relatively new Constitutional dispensation introducing novel imperatives and therefore it is of paramount importance that whatever administrative action is performed by administrators it is mirrored against the standards set by the Constitution. In other countries like in South Africa special procedures have been developed to assist administrators in the exercise of these functions. It would appear to me that this country also needs to adopt these special measures to aide administrative decisions. This role, in my humble view, can best be carried out by the Legislature assisted by the Ministry of Justice and Constitutional Affairs and advised by the Attorney General of this country.

[41] Further, I find that on the totality of the averments in the Applicants Founding Affidavit a case has been made for the relief sought in the Notice of Motion as afore-mentioned.

[42] On the question of whether this court ought to strike down Section 107 of the Urban Government Act for being unconstitutional. I decline to do so in this judgment and would leave that question to be heard by a Full Bench of this court appointed by the Chief Justice. I would also recommend that the question be added to the case for review as stated earlier

on. In this regard the Registrar ought to transmit that case to the Chief Justice to assign a Full Bench of this court as a matter of extreme urgency.

[43] On the question of costs I am mindful that I reserved costs in a prior sitting of this court and in that regard I have come to the considered view that those costs be costs in this main matter.

[44] I wish to comment *en passant* that it is the roughshod attitude of the Honourable Minister on the elected Councilors that is the cause of all these problems. He should have afforded them a proper hearing before embarking on this action. Furthermore, the Interim Councilors can only be described as innocent bystanders. Their only sin was to support the Minister when they should have declined to enter the dispute. Therefore, they will now be visited with an order for costs of the application together with the Swaziland Government.

[45] In the result, for the afore-going reasons the application is granted in terms of the Notice of Motion and that costs be costs in the normal scale.

S.B. MAPHALALA

JUDGE