

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 1546/2008

KHANYAKWEZWE A. MHLANGA

1st Applicant

KHANYAKWEZWE SIPHO TSABEDZE

2nd Applicant

THANDUKWAZIZWANE

3rd Applicant

BHEKUBUHLE DLAMINI

4th Applicant

ISAIAH TSELA

5th Applicant

And

THE COMMISSIONER OF POLICE

1st Respondent

SENIOR SUPERINTENDENT POLYCARP NGUBANE

2nd Respondent

SUPERINTEDENT SIKHULU SHONGWE

3rd Respondent

SENIOR SUPERINTEDENT E.D. MATFUNJWA

4th Respondent

CIVIL SERVICE COMMISSION

5th Respondent

THE ATTORNEY GENERAL

6th Respondent

Coram: S.B. MAPHALALA - J

For the Applicant: MR. T. MASEKO

For the Respondents: MR. S. KHUMALO

JUDGMENT
25th July 2008

[1] The four Applicants who are all police officers of the Royal Swaziland Police have filed this urgent application calling upon the Respondents to show cause, if any, on a date and time to be determined by this court why the first, second, third and fourth Respondents should not be ordered to stop proceedings with disciplinary hearing against the Applicants and all other officers respectively below the rank of Deputy Commissioner of Police. In prayer 2.2 thereof that Section 12 and 13 of the Police Act No. 29 of 1957 should not be declared null and void on the grounds that these Sections are inconsistent with the provisions of Section 189 (5) of the Constitution.

[2] Further in prayer 2.3 that paragraph 2.1 above operate as an interim order with immediate effect pending the final determination of this matter. In prayer 3 thereof asked for costs of this application in the event the application is opposed.

[3] In arguments before me on the 2nd July 2008, I put it to both Counsel whether this matter should not be heard by a Full Bench of this court since it is concerned with constitutional questions, one of which is to declare null and void certain sections of the Police Act. I said so because in the past this court has referred such matters to be heard by a Full Bench of this court consisting a constitutional court. Both Counsel took the view that this court can proceed to issue a judgment as a single judge of this court.

[4] I have considered what has been stated by both Counsel and I have come to the considered view that the question for determination is a vexed one calling for the power and prestige of a Full Court forming a constitutional court of this country. It is for this reason that I would refer this matter to a Full Court forming a constitutional court of this country. Therefore, I refer this matter to the Registrar to forward this case to the Chief Justice to assign to a Full Court. Furthermore that in view of the fact that this matter was brought under a Certificate of Urgency the necessary haste to be accorded thereby. I make no order as to costs.

S.B. MAPHALALA
PRINCIPAL JUDGE