



IN THE INDUSTRIAL COURT OF SWAZILAND

JUDGMENT

Case NO. 4/12

In the matter between:

CASPER GININDZA

Applicant

And

**CHAIRPERSON OF THE CIVIL
SERVICE COMMISSION**

1st Respondent

SWAZILAND GOVERNMENT

2nd Respondent

THE ATTORNEY GENERAL

3rd Respondent

Neutral citation: *Casper Ginindza & Chairperson of the civil Service Commission & Others (4/12 [2012] SZIC 5 (MARCH 2012)*

Coram: NKONYANE J,
*(Sitting with G. Ndzinisa & S. Mvubu
Nominated Members of the Court)*

Heard: **8 MARCH 2012**

Delivered: **16 MARCH 2012**

Summary:

Urgent application—Employer suspending employee on half pay without first giving the employee a chance to present his views on the issue—Consent order granted setting aside the suspension. Costs on the attorney and own client scale—Court found that such was not justifiable where there was no proof that the Respondent acted maliciously or recklessly. The court is loath to make such an order where the employer/employee relationship still subsists—Court accordingly makes an order for costs on the ordinary scale.

JUDGMENT ON COSTS

1. The Applicant instituted the present application under a certificate of urgency. He is seeking an order setting aside and declaring his suspension on half pay null and void and of no force or effect.
2. The Applicant is a civil servant employed by the Ministry of Agriculture. He was suspended on half pay by the 1st Respondent by letter dated 06th January 2012 pending finalization of investigations by the Ministry.
3. The application is opposed by the 1st and 2nd Respondents on whose behalf an Answering Affidavit was filed by the 3rd Respondent. The Applicant thereafter filed his Replying Affidavit.
4. The application first appeared before the court on 16.01.12. It was postponed until 31.01.12 for argument. On this day the matter did not proceed on argument and it was again postponed until 07.02.12.

5. When the matter was called on 07.02.12 the 1st and 2nd Respondent Attorney informed the court that they were consenting to an order being granted in terms of prayer 2.1, the main prayer, that is; setting aside the suspension on half pay and declaring such to be null and void *ab initio* and of no force and effect. They did not consent to prayer 2.2 dealing with costs on an attorney and own client scale.
6. The court instructed the parties to go and put their heads together and try to resolve the question of costs out of court. The parties failed to resolve the question of costs on their own hence the matter came back to the court on 08.03.12 for argument on the question of costs.
7. On behalf of the Applicant it was argued that;
 - 7.1 The suspension with half pay was clearly unlawful.
 - 7.2 The suspension with half pay has serious financial prejudice on the Applicant as he is unable to meet his monthly obligations.
 - 7.3 The Applicant has incurred legal expenses as he has had to instruct an attorney to enforce his rights in court.
8. On behalf of the 1st and 2nd Respondents it was argued that;

- 8.1 No serious financial prejudice was incurred by the Applicant as he was suspended on half pay.
 - 8.2 The Industrial Court as a court of equity must take into account that the 1st and 2nd Respondents consented to the main order sought by the Applicant and did not waste the court's time.
 - 8.3 The 2nd Respondent is currently facing a serious financial crisis.
 - 8.4 If the court decides to grant the order for costs, such order should be for costs on the ordinary scale.
- 9.** From the papers filed in court, it is not hard to see why the Respondents agreed to the consent order being granted. Prima facie, the process that led to the suspension of the Applicant on half pay was totally mishandled by the 1st Respondent. The apparent blunders committed by the 1st Respondent are inexcusable because the 1st Respondent has access to free legal advice from the office of the 3rd Respondent. There is absolutely no acceptable reason why the 1st Respondent should fail to properly handle a simple hearing when it could simply seek guidance

and advice from the 3rd Respondent when it is not sure how to carry out the process.

10. This case is distinguishable from that of **Mduduzi Zulu v. Principal Secretary & Ministry of Natural Resources, case No. 193/2008 (IC)**. In that case the salary of the Applicant was abruptly stopped for two months without any explanation being given. In the present case the Applicant's salary was not stopped completely, it was halved. On the question of costs the court held in that case that ;

“In our view the apparently reckless or malicious conduct of the 1st Respondent not only entitled the Applicant to resort to litigation, but also entitled the Applicant to full recompense for the costs of that litigation.”

The court went on to grant an order for costs on the punitive scale.

11. The general rule on the question of costs is that the successful party is entitled to his costs. The Industrial Court however has a duty in terms of **Section 4 of the Industrial Relations Act No.1 of 2000** to also take into account fairness and equity. It is also enjoined to promote harmonious industrial relations at the workplace.
12. There was no evidence nor was it suggested during the submissions that the 1st Respondent acted maliciously or recklessly in the manner that it did. The 1st Respondent as the employer of the Applicant had the right in law to suspend its employee pending investigations. The 1st Respondent was however negligent in not seeking legal advice from the

3rd Respondent as to how to go about it. The Applicant has had to spend money to instruct an attorney in order to bring the 1st Respondent to order.

13. This court is loath to issue an order for costs on the punitive scale where the employer/employee relationship still subsists as that may have the effect of negatively affecting the relationship between the parties. As already pointed out in paragraph 11, the Industrial Court has a duty to promote harmonious industrial relations at the workplace. One of the ways to do this is not to readily grant an order for costs on the punitive scale where the employer/employee relationship is still in place. The court will also take into account that the Respondents consented to the granting of the substantive relief.

14. Taking into account all the above observations and also all the circumstances of this case the court will make the following order;

a) The 1st and 2nd Respondents are jointly and severally liable to pay the costs of the application on the ordinary scale. The one paying the other to be absolved.

15. The members agree.