



**IN THE CONCILIATION, MEDIATION & ARBITRATION
COMMISSION (CMAC)**

HELD AT MANZINI

SWMZ 423/10

In the matter between:-

SPRAWU

APPLICANT

And

AFRICAN TYRES (PTY) LTD

T/A AUTO CITY

RESPONDENT

CORAM:

Arbitrator : Mthunzi Shabangu

For Applicant : None

For Respondent : Mr. Abel DuPont

Nature of Dispute : Application for Recognition

Date of Hearing : 26th November, 2010

Ruling In Terms of Rule 27 (1) (a) of CMAC'S Rules

1. DETAILS OF HEARING AND REPRESENTATION:

- 1.1 The Applicant is Swaziland Processing and Refining Allied Workers Union (SPRAWU), a trade union registered as such in terms of Section 27 of the Industrial Relations Act, 2000 (as amended). Its postal address is P.O. Box 1158, Manzini.
- 1.2 The Respondent is African Tyres (PTY) LTD t/a Auto City, a company duly registered and incorporated according to the company's Act carrying on business at Manzini. Its postal address is P.O. Box 2356, Manzini.
- 1.3 On the 26th November, 2010 at a hearing held at CMAC Offices-Manzini I made an *ex-tempore* ruling dismissing the Applicant's recognition application per the provisions of Rule 27 of CMAC'S Rules. I henceforth present the reasons there for.
- 1.4 Present for the Respondent during the hearing was one Mr. DuPont in his official capacity as Manager within the Respondent's employ. No one appeared for and on behalf of the Applicant.
- 1.5 The Applicant's non-representation orchestrated an application by the Respondent to have the matter dismissed in terms of Rule 27(1)(a) of CMAC's Rules.

2. ISSUE TO BE DECIDED

2.1 The issue for determination pertains the dismissal of the Applicant's recognition application to be a collective employee representative for and on behalf of the Respondent's employees, owing to the Applicant's failure and/or neglect to attend the arbitration hearing. The application for dismissal was in terms of Rule 27(1)(a) of CMAC's Rules.

3. BACKGROUND TO THE ISSUE

3.1 The background of this matter is more like a saga. This matter was referred to automatic arbitration due to operation of the law. It is an unresolved dispute pertaining the Applicant's application to be recognized by the Respondent as a collective employee representative in terms of Section 42 of the Industrial Relations Act, 2000 (as amended).

3.2 Set down notices and/or invitations were issued by the Commission calling upon the parties to attend an arbitration hearing of the matter. The first date set was the 22nd October, 2010 wherein only the Applicant's representative was in attendance in the person of one Mr. Tom Simelane. No application for a postponement had been filed by the Respondent. I ordered that the matter be re-scheduled to give the

Respondent one more chance to attend, due to the nature of the dispute - being an application to establish a para-legal social partnership. The matter was consequently postponed to the 4th November, 2010 at 10:30 a.m.

- 3.3 On the 4th November, 2010 the Respondent still did not send anyone to represent it. One Mr. Kenneth Mthethwa represented the Applicant on that date. On that date the Applicant was at liberty to proceed with the matter by leading its evidence in proof of its case notwithstanding the non-representation of the Respondent. However, Mr Mthethwa was not ready to open the Applicant's case and lead evidence in proof of its cause allegedly due to the fact that one of its key witnesses named Dumisani Maziya was not released at work by the Respondent. The matter was again postponed to the 12th November, 2010 at 09:00 hours and the Applicant's representative was warned to bring his witnesses on that date and if need be, to arrange for the issuance of subpoenas. An agreement to postpone was signed by the Applicant's representative in postponement of the matter to the 12th November, 2010 at 09:00 a.m.
- 3.4 When the matter was called for arbitration on the 12th November, 2010 the Applicant had sent no one

to represent it and yet the Respondent was represented by its Manager Mr. Abel DuPont. No application for a postponement had been made by the Applicant.

- 3.5 When the Case Management Officer (CMO) was requested to make a telephone call to the Applicant's officials she gave me a report to the effect that the Applicant's Mr. Tom Simelane is pleading forgetfulness on their part as being the main reason for their non-attendance. The Respondent conceded that one indulgence be extended to the Applicants, more especially since same had been extended to them (i.e. Respondent) in the past. The matter was postponed to Friday the 26th November, 2010.
- 3.6 When no one appeared for and on behalf of the Applicant on the 26th November, the Respondent's representative applied that the matter be dismissed.

4 APPLICABLE LAW

- 4.1 Rule 27(1)(a) of the Commission's Rules provides that if the party who referred the dispute to the Commission fails to attend the hearing or is not represented, and the Commissioner is satisfied that that party was properly notified of the arbitration

hearing, and there is no just and reasonable explanation for that party's failure to attend or non-representation, the Commissioner may dismiss the matter.

4.2 It is common cause that the Applicant was properly notified of the arbitration hearing of this matter. It is the Applicant's official representative, Mr. Kenneth Mthethwa, who personally signed an agreement to postpone the matter on the 4th November, 2010 to the 12th November, 2010. It is therefore beyond doubt that the Applicants were aware that the matter was on the roll on the 12th November, 2010. Their non attendance on that date nor at some other future date to ascertain what transpired on the matter on the 12th November, 2010 amounts to sheer negligence on their part. Moreover, it is conduct that unequivocally points towards reluctance or unwillingness to pursue the matter.

4.3 As between the 12th November, 2010 and the 26th November, 2010 the Applicants had ample time to approach the Case Management Officer (CMO) and seek for an update. They would have been advised that the matter was postponed to the 26th November, 2010. Site need not be lost to the fact that the Applicant is, in law, a *dominus litis*, i.e. an owner of a

matter. It is therefore incumbent upon an Applicant to make constant follow-ups on his/her matter as it is him/her who alleges to be aggrieved and is seeking redress and/or enforcement of a right.

4.4 When met with an application for a dismissal of the matter on the 26th November, 2010 owing to the Applicant's non-attendance, there would have been no lawful or even equitable ground or basis for a refusal thereof. The Applicant's conduct is indeed shameful. It is conduct that surely amounts to abuse of the honourable Commission and deserves censure. If a party who has referred a dispute to the Commission no longer intends pursuing that matter, it should act responsibly by filing a withdrawal notice, which could be in the form of a simple letter (in the absence of any formal pro-forma in the commission's Forms for now) or attend the hearing and tender the withdrawal verbally. That is the procedure that obtains even at the Industrial Court and the High Court.

4.5 It is for the foregoing reason that the application for a dismissal of the Applicant's application for a recognition was sustained.

5 RULING

5.1 The recognition application filed by the Applicant against the Respondent remains dismissed.

DATED AT MANZINI ON THEDAY OF JANUARY, 2011.

**MTHUNZI SHABANGU
CMAC COMMISSIONER**