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SWAZILAND HIGH COURT

TUNTEX TEXTILES (PTY) LIMITED
Plaintiff

Vs

SWAZILAND MANUFACTURING AND ALLIED WORKERS UNION
1st Respondent

KENNETH NKAMBULE N.O.
2nd Respondent

Civ. Case No. 3269/2001

Coram

SAPIRE, CJ

For Plaintiff
For Defendant

Mr. J. Hlophe
Mr. M. Dlamini

JUDGMENT
(23/07/2002)

This is an application to review the decision of the Industrial Court.

The applicant is a company which carries on business at Matsapha Industrial sites. The first respondent is the Swaziland Manufacturing & Allied Workers Union, a Labour Organisation duly established in terms of the Industrial Relations Act, having power to sue and to be sued of Agora Shopping Complex, King Mswati 111 Avenue, Matsapha Industrial Site.

The dispute before the Industrial Court was whether or not recognition had to be given by the applicant to the 1st respondent in terms of Section 43 (5) of the Industrial Relations Act. The matter went to the Industrial Court, which gave a ruling on the 29th October last year. In the ruling the presiding judge described the order which is being sought, that was, directing the respondent to recognise the applicant as the exclusive collective employee representative at the respondent's undertaking concerning all terms and conditions of employment including wages and hours of work.

The applicant also sought an order directing the respondent to deduct 1% subscription of the applicant's members at the respondent's undertaking and paying them to applicant.

Ancillary to this the Respondent sought an order declaring the conduct of the respondent of threatening, harassing and victimising applicant's members unlawful and illegal. Also further and/or alternative relief.

The outcome was that the Industrial Court made an order on the application that the respondent recognises the applicant's Union as the exclusive collective employee representative at its undertaking concerning all terms and conditions of employment including wages and hours of work, that the respondent was to deduct 1% of the wages of the applicant members as subscription and no further order was made. The present applicant has opposed the proceedings and has filed an answer to the founding papers lodged by the respondent.

The nub of the matter is that the present applicant, that is the applicant seeking review, with reference to Section 43(5) of the Industrial Relations Act sought to indicate that the required number of employees at the undertaking had not been reached and that the claim by the applicant to have more than 50% of the employees was incorrect.

The present applicant gave particulars of the reasons why it says that the number of percentage was not attained. This was that the number as alleged by the applicant was inflated by the inclusion of a number of names that were spurious. There were three categories. There were names of those who had never joined the

union and that their signatures were forged. These people, it is said, disassociated themselves from the organisation. Another category comprised those who had died and for this reason were no longer members of the workforce. Others were names of individuals who had left. Those were the three categories.

There was indeed a dispute of fact. That is whether or not 50% of the employees in respect of whom the union or industry staff association sought recognition were fully paid up members of the organisation concerned.

The judge *a quo* refused to hear evidence in support of the respondent's reply. In this the court *a quo* erred. Clearly this was an issue which was relevant and in finding as it did that there are no disputes of facts which need *viva voce* evidence, the court precluded itself from conducting the matter in accordance with the *audi alterem partem* rule. Those affected thereby should be given an opportunity of being heard and presenting such evidence, as they considered relevant before a decision was made. This being so the decision of the court *a quo* is reviewable and the ruling as it was called must be set aside. The matter must be and is referred back to the Industrial Court to hear evidence to establish whether now or any other time 50% of the workforce at the applicant's undertaking are members of the Union.

I am not making any order as to costs at this stage.


SAPIRE, CJ