

IN THE INDUSTRIAL COURT OF SWAZILAND HELD AT MBABANE

CASE NO. 190/91

IN THE MATTER BETWEEN:

SWAZILAND DEVELOPMENT AND SAVINGS BANK

APPLICANT

AND

SWAZILAND UNION OF FINANCIAL INSTITUTIONS AND ALLIED WORKERS

AND OTHERS

RESPONDENT

RULING

THIS IS A MATTER BROUGHT AS A MATTER OF SUFFICIENT URGENCY BY THE APPLICANT IN WHICH IT SEEKS THE DETERMINATION OF THE FOLLOWING QUESTIONS:

(1) WHETHER THE DISPUTE WHICH HAS BEEN REPORTED TO THE LABOUR COMMISSIONER IS ONE THAT CONCERNS THE APPLICATION TO ANY EMPLOYEE OF EXISTING TERMS AND CONDITIONS OF EMPLOYMENT OR THE DENIAL OF ANY RIGHT APPLICABLE TO ANY SUCH EMPLOYEE IN RESPECT OF HIS EMPLOYMENT OR

(2) WHETHER THE DISPUTE WHICH HAS BEEN REPORTED TO THE LABOUR COMMISSIONER IS ONE THAT CONCERNS THE DISMISSAL EMPLOYMENT RE EMPLOYMENT OR RE INSTATEMENT OF ANY EMPLOYEE.

THE RESPONDENTS HAVE RAISED A PRELIMINARY OBJECTION TO THE APPLICATION. THE RESPONDENTS HAVE CONTENDED THAT THE APPLICANT HAS BROUGHT THIS APPLICATION BEFORE COURT PURSUANT TO SECTION 53(1) OF THE INDUSTRIAL RELATIONS ACT. THAT IS THE APPLICANT SEEKS THE COURTS' DETERMINATION OF THE QUESTION OF THE NATURE OF THE DISPUTE BETWEEN THE PARTIES. THE APPLICANT HAS MADE THIS

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APPLICATION AFTER THE LABOUR COMMISSIONER ISSUED A CERTIFICATE OF UNRESOLVED DISPUTE ON THE MATTER THAT HAD BEEN REPORTED TO HIM INVOLVING THE PARTIES, IT HAS BEEN SUBMITTED THAT THE QUESTION AS TO THE NATURE OF THE DISPUTE WAS NEVER RAISED BEFORE THE LABOUR COMMISSIONER. THAT THE APPLICANT KNEW FOR 4 MONTHS THE NATURE OF THE "DISPUTE. THAT THE PURPOSE OF THIS APPLICATION IS TO PREVENT THE RESPONDENT FROM GOING ON A LAWFUL STRIKE.

THE APPLICANT HAS SUBMITTED THAT IT DID NOT REPORT THE DISPUTE TO THE LABOUR COMMISSIONER, THAT THE RESPONDENT IS THE ONE THAT REPORTED THE DISPUTE TO THE LABOUR COMMISSIONER. THE RESPONDENT HAS REFERRED THE DISPUTE TO COURT AND SUMMARISED IT. IT IS, THE APPLICANT'S CONTENTION THAT THE MATTER IS PROPERLY BEFORE COURT, THAT THE COURT SHOULD ISSUE AN INTERDICT WHILE WAITING FOR THE MATTER TO BE DEALT WITH ON THE MERITS.

THE RESPONDENT IN ANSWER SUBMITTED THAT SECTION 53 IS BEING MANIPULATED TO PREVENT A LAWFUL STRIKE. THAT THE APPLICATION IS AN ABUSE OF THE RULES OF THE COURT. THE APPLICANT HAS SOUGHT AN ORDER ENJOINING THE RESPONDENT FROM TAKING STRIKE ACTION.

WE ARE AMAZED THAT THIS APPLICATION WAS FILED BEFORE COURT ON THE 27TH

NOVEMBER, 1991 VERY LATE IN THE AFTERNOON. APPLICANT HAS CONCEDED BEFORE COURT ITS KNOWLEDGE THAT THE RESPONDENT INTENDS TO TAKE STRIKE ACTION ON THE 30TH NOVEMBER, 1991 AND THAT THIS APPLICATION HAS BEEN TAKEN TO FORESTALL SUCH STRIKE ACTION.

THE QUESTION THAT COMES TO MIND IS THAT: IF THE APPLICANT WAS OF THE CONSIDERED VIEW THAT THE NATURE OF THE DISPUTE BETWEEN THE PARTIES HAD NOT BEEN DETERMINED WHY DID IT WAIT UNTIL THE RESPONDENT GAVE NOTICE THAT IT WOULD TAKE STRIKE ACTION ON THE 30TH NOVEMBER, 1991. WHY DID THE APPLICANT WAIT UNTIL 27TH NOVEMBER, 1991 TO FILE AN APPLICATION IN COURT SEEING THE COURTS' DETERMINATION OF THE QUESTION OF THE NATURE OF THE

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DISPUTE BETWEEN THE PARTIES FURTHER IF THE QUESTION AS TO THE NATURE OF THE DISPUTE BETWEEN THE PARTIES HAD NOT BEEN DETERMINED WHAT MATTERS WERE BEING CONCILIATED UPON BY THE LABOUR COMMISSIONER LEADING TO THE ISSUANCE OF THE CERTIFICATE OF UNRESOLVED DISPUTE.

WE WOULD AGREE WITH THE RESPONDENT THAT THE NATURE OF THE DISPUTE BETWEEN THE PARTIES HAS ALWAYS BEEN KNOWN. WE AGREE WITH THE RESPONDENT THAT THE APPLICANT HAS ALWAYS KNOWN THE NATURE OF THE DISPUTE EXISTING BETWEEN IT AND THE RESPONDENT.

THE APPLICANT HAS PERSUADED THE COURT THAT IT SHOULD DETERMINE THE NATURE OF THE DISPUTE BETWEEN THE PARTIES PURSUANT TO SECTION 53 (1) (A) AND (B). THE APPLICANT HAS SUBMITTED THAT THE APPLICATION IS PROPERLY BEFORE COURT PURSUANT TO SECTION 53 OF THE INDUSTRIAL RELATIONS ACT.

IT IS THE DECISION OF THE COURT THAT THE APPLICANT KNOWS AND HAS ALWAYS KNOWN THE NATURE OF THE DISPUTE EXISTING BETWEEN IT AND THE RESPONDENT THIS COURT CANNOT DETERMINE AN ISSUE THAT HAS ALREADY BEEN RESOLVED. CONSEQUENTLY THE APPLICATION BEFORE COURT PURSUANT TO SECTION 53 OF THE INDUSTRIAL RELATIONS ACT IS IMPROPERLY BEFORE IT. THE COURT WILL NOT GRANT THE INTERDICT SOUGHT. THE RESPONDENTS POINT IN LIMINE HAS BEEN SUCCESSFUL

MARTIN SAMSON BANDA

PRESIDENT OF THE INDUSTRIAL COURT