

IN THE INDUSTRIAL COURT OF SWAZILAND

CASE NO. 114/91

Held at Mbabane

In the matter between:-

SWAZILAND INDUSTRIAL AGENCIES
(PTY) LIMITED

APPLICANT

and

SWAZILAND COMMERCIAL AND ALLIED
WORKERS UNION

RESPONDENT

RULING

This is an application by the Applicant in which it seeks the setting aside of an order that was granted on the 29th May 1991 under case No. 88/91 which directed the Applicant to grant access to the Respondent to enter its premises for the purpose of holding an industry union meeting. The order was granted pursuant to Section 74(3) of the Industrial Relations Act.

Mr. Cloete on behalf of the Applicant submitted that the matter purports to have been brought ex parte. Ex parte matters are heard where it does not affect the rights of another party or alternatively where service of the application would defeat the object of the application.

Mr. Cloete submitted that the facts contained in the affidavits filed by the Respondent in support of their application for an order were untrue in terms of the affidavits filed, by his clients. He stated that the Application papers by the Respondent as they stood contained no allegation that the Applicant in that matter namely the Union were entitled to hold that meeting.

It was Mr. Cloete's contention that the union had no loci standi to bring the application in the first place in view of the fact it is not recognised by

2

his client nor is his client obliged to recognise it because as seen from the schedule setting out all the employees and membership of the union that it does not have the necessary head count of 40%.

May we state here that Mr. Cloete's attention was drawn to Section 36(5) and Section 36(7) of the Industrial Relations Act in view of the fact that an application had been submitted to his client by the union he was unable to make any submission other than to state that this was a whole new issue of law. He then referred the court to paragraph 13 of his clients affidavit in support of its application.

If as alleged in paragraph 12 of the Applicants affidavit the Respondent does not have 40% fully paid up members working for the Applicant. The Applicant should have made application pursuant to Section 36(7) of the Industrial Relations Act. Mr. Cloete submitted that it was for the Respondent to apply to court for recognition where an employer did not grant them recognition. After his attention was drawn to Section 36(5) he did not comment on the issue.

The grounds that have been advanced in paragraph 13 of the Applicant's affidavit are without the blessing of the law. The instructive paragraph is paragraph 17 that the Applicants had objected to the holding of a meeting by the Respondents inside its buildings. Paragraph 17 is completely indirect contradiction of paragraph 21, 11, 12, 13. Mr. Cloete was asked to assist the court in identifying the prejudice suffered by his client and he said his client was entitled to be heard.

This court is not satisfied that correct and satisfactory grounds have been advanced by the Applicant namely the employer necessitating the setting aside of the order granted on the 29th May 1991.

3

The Respondent is not guilty of material misstatement of fact nor was it guilty of failure to make sufficient or candid disclosure in its application. The Applicant has not satisfied this court that its reason for objecting to the holding of a meeting inside the buildings was reasonable or in keeping with the provisions of Section 74 of the Industrial Relations Act.

The order granted on the 29th May 1991 to the Respondent namely compelling the Applicant Swaziland Industrial Agencies to grant access to the Respondent Swaziland Commercial and Allied Workers Union still stands. Accordingly the Notice of Motion filed by the employer is dismissed.

MARTIN S. BANDA

INDUSTRIAL COURT PRESIDENT