IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO: 14/96

In the matter between:

SOLOMON COUANA APPLICANT

AND

ATLAS MOTORS (PTY) LTD RESPONDENT

RULING

This is an Applicant moved by the Applicant seeking an order to rescind and order made by this Court on the 4th April 1997 in which the Respondent obtained an order amending its reply by inclusion of the following paragraph:

IN LIMINE

The Respondent states that the Report of Dispute in this matter was irregular in that whilst there was at that time a Union recognised in the undertaking in terms of section 43 of the Industrial Relations Act, the Applicant reported the dispute to the Labour Commissioner and not the Union, in Violation of section 57(1) (f)

Accordingly this matter is not properly before the Honourable Court which has no jurisdiction to hear it.

Wherefore Respondent prays that the steps taken by the Labour Commissioner be set aside and the application be dismissed.

The application seeking the rescission of the order granted allowing the Respondent to amend its papers is based on the fact that the Applicant had intended to oppose the application to amend and in the Applicants view the application did not comply with Rule 28(2) of the High Court Rules. The application seeking rescission is supported by an affidavit sworn by Applicants counsel which explains her failure to be in Court at the time the application to

amend was moved.

It has been argued that the Applicant has been prejudiced as he is no longer in the position he was before the amendment. He would like to be heard. He applies that the order be set aside as it was erroneously granted.

For the Respondent it was argued that the Applicant has not disclosed in the affidavit supporting the application for rescission errors in the Respondents application for amendment. It has been argued that the Applicant was in Court when the 4th April 1997 was set for argument of the application to amend. It was not argued on his behalf that he would not be in opposition to argue, did not file papers opposing the application for amendment. It has been argued that the fact that Applicants attorney was before another Court when the application for amendment was made is not an error for which the order granted to amend Respondents reply can be rescinded.

We are at a loss to appreciate the application seeking rescission of the order granted allowing the Respondent to amend its reply. We are not moved nor persuaded by the reasons advanced on behalf of the Applicant. We have not been shown what prejudice has befallen the Applicant as a result of the amendment that was allowed. The fact that he would have wished to be heard when the application for amendment was made is not per se prejudice for which an order granted can be rescinded. The application for rescission is refused.

MARTIN SAMSON BANDA

PRESIDENT OF THE INDUSTRIAL COURT