IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 133/96

In the matter between:

ROBINSON ZIKALALA APPLICANT

and

PETER MASHININI RESPONDENT

RULING

In the initial application the Applicant seeks relief on the following heads of claims:

- 1. One month wages in lieu of Notice E542.76
- 2. 32 days additional notice E668.16
- 3. 80 days Severance Allowance E1670.40
- 4. 132 days leave pay E2756.1&
- 5. Underpayment E18,936.55

The certificate of Unresolved Dispute which was attached to the application gave issues in dispute as follows:

- 1. Payment in lieu of notice
- 2. Additional Notice
- 3. Severance Allowance
- 4. Payment in respect of underpayment

There was no mention of an item called Leave Pay. The Respondent has now in its Reply raised a point raised in Limine with regard to the claim for Leave Pay alleging that there are no allegations of fact to support it and therefore seeks the instant dismissal of the claim. On the claim for underpayments it is the Respondent's case that the alleged underpayments which were not reported to the Commissioner of Labour within six months are improperly before the Court.

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At the start of the arguments it was submitted on behalf of the Applicant that the claim for underpayments was being withdrawn. Thus the claim for underpayments was accordingly dismissed.

The parties then proceeded to argue the claim for Leave Pay. In response to the Respondent's submission that the claim for Leave Pay was without allegations of fact to support it and to enable the Respondent to be in a position to plead pursuant to Rule 4 (1) (c) of the Industrial Court Rules of 1984 which state and we quote:

- "4 (i) (c) Proceedings before the Industrial Court shall be instituted by the Applicant presenting to the Registrar an application together with six copies thereof setting out the following:
- (c) the nature and full particulars of each item of the claim involved in the dispute and as stated in the terms of reference to the Court ".

The response of the Applicant was that these are terminal benefits and a matter of fact which should

be adduced in evidence.

we would like to emphasize that the purpose of pleadings and the rules set out in Rule 4 of the Industrial Court Rules of 1984 is o enable parties to meet the allegations of the other. To admit where possible a claim which is not being disputed and thus narrow the points of contention that need to have evidence lead and arguments presented before Court. It does not answer the demand that full particulars and nature of each item of claim be stated by saying the claim will be supported by evidence during trial. This is a deliberate invitation to waste the Court's time on matters that it need not even have heard from the onset if same had been properly presented pleaded with all particularity.

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We agree with the Respondent that the Applicant has not pleaded the claim for Leave pay by setting out the nature and full particulars as demanded of him by Rule 4 (1) (c) of the Industrial Court Rules of 1984. We shall however not dismiss this head of claim outright as sought by the Respondent. We shall grant the Applicant leave to amend its papers by complying with Rule 4 (1) (c) of the Industrial Court Rules in respect of the claim for leave.

MARTIN SAMSON BANDA

PRESIDENT - INDUSTRIAL COURT