IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 116/99

In the matter between:

SWAZILAND RANCHES LIMITED T/A

TABANKULU ESTATE APPLICANT

And

SWAZILAND AGRICULTURE AND PLANTATIONS

WORKERS UNION AND THE OTHERS 1ST RESPONDENT

PHINEAS LUKHELE 2ND RESPONDENT

SIMON MSIBI 3RD RESPONDENT

MICHAEL FAKUDZE 4TH RESPONDENT

JOSHUA ZIYANE 5TH RESPONDENT

MAHLOBA MABILA 6TH RESPONDENT

THEMBA DLAMINI 7TH RESPONDENT

AGRIPPA SIBANDZE 8TH RESPONDENT

CORAM:

NDERI NDUMA : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMBER

FOR THE APPLICANT : MR. M. SIBANDZE

FOR THE RESPONDENT : MR. E. HLOPHE

JUDGEMENT

(12. 08. 99)

The Applicant has brought this Application on a Certificate of Urgency seeking the following orders ;

1. ". Dispensing with the usual forms and procedures and time limits relating to the institution of proceedings and allowing this matter to be heard as a matter of urgency.
2. That the Respondents be and are hereby interdicted and restrained from inciting, instigating and participating in unlawful mass action and acts of violence against the Applicant:
3. That the Respondents be and are hereby interdicted and restrained from calling mass meetings of the Applicant's employees within the boundaries of the Applicant's Estate without prior application to the Industrial Court, which application shall set out the steps which they would take to prevent acts of violence

from arising from such mass meetings, and further that they be ordered to notify the Royal Swaziland Police timeously in advance of such meetings.

4. That the Respondents be and are hereby interdicted and restrained from inciting, instigating or participating in any marches or mass movements of employees through the Applicant's Estate without prior approval of the Applicant
5. That the Respondents be and are hereby ordered to pay the costs of this Application.
6. That the above Honourable Court grant such other or alternative relief as it may deem fit.

A rule nisi in terms of prayers 1 and 2 to operate with immediate effect was granted on the 20th July 1999 upon hearing counsel for the parties. Indeed the Respondent did not object to the granting of the order.

When the matter came for arguments, counsel for the Respondent Mr. E. Hlophe informed the court that the Respondent did not object to a final order in terms of prayer number 2 of the Notice of Motion but raised opposition to the confirmation of prayer 4.

The Applicant has urged the court to confirm prayers 2 and 4 and in addition issue a further order in terms of prayer 6 that is "such other or alternative relief as it may deem fit"

restraining the Respondents from calling any mass meetings within the Applicants estate without prior approval of the applicant.

We depart from the premise that workers organisations cannot exist if workers are not free to join them, to work for them, to remain in them, and to participate in all lawful activities that facilitate and are complementary to collective bargaining.

The freedom of the workers to responsibly associate freely is now a recognised fundamental human right and a civil liberty that ranks with freedom of speech, freedom of religion and freedom from arbitrary arrest and seizure.

Section 77 of the Industrial Relations Act provides for and guarantees freedom of association and the right to organise to every employee. Section 79 on the other hand provides for prohibited employers practices especially that which may hinder free and responsible activities of the union and its members in their pursuit for better working conditions.

Briefly, the facts of this case are as follows :

The Applicant and Respondent have been engaged in wage negotiations. There is a controversy involving an alleged overtime ban embarked upon by the Respondents to pressure the Applicant to accede to their wage demands. A rule nisi was issued restraining the Respondents from continuing with the said limitation of out-put of work until the dispute has been determined by the court.

At a negotiations meeting on the 14th July, 1999 both parties admitted deadlock. The negotiations broke off at approximately 17.00hrs. The Respondents proceeded to the Applicant's stadium to give a feedback to their constituents.

At approximately 19.00hrs a group of workers estimated at between 300 to 400 matched towards the club from the meeting venue.

It is undisputed that the employees participated in various violent actions against members of the management and the visitors who were at the club. Stones were thrown smashing the club windows and sliding doors, people at the bar received minor injuries and cuts from stones and broken glass.

Mr. Basil McMENAMIN the Human Resources Consultant of the Respondent, and the deponent to the Founding Affidavit was at the club at the material time. He personally saw the 2nd, 3rd and 6th Respondents amongst the group of invading employees.

The club was literally vandalised and the employees helped themselves to everything on sight. The

deponent and other occupants of the club were forced to lock themselves into a storeroom for their safety. The few members of the Royal Swaziland Police Force in attendance were helpless as they were completely outnumbered. The club suffered extensive damage including motor vehicles in the car park. Mr. Basil's motor vehicle was set on fire.

The Respondents do not deny the details of the violent activities by the employees. They do not seriously deny their presence while this melee, pandemonium and raw destruction was perpetrated by the workers.

The Respondents however, deny that they are responsible for this violence. They state that they never incited, instigated nor participated in the violence. Indeed they told the court that they tried to restrain the workers from engaging in any unlawful activities and that the employees had agreed to embark on a peaceful march to show their displeasure with the management's decision not to accept their demands. Furthermore Mr. Hlophe argued that the acts of violence were spontaneous and were commenced only in response to gunshots that came from within the club premises.

The issue of the gunshots was seriously contested and we could not be able to determine whether shots were fired or not from the arguments by counsel and the papers as filed without hearing oral evidence. It was however unnecessary to determine this issue by way of oral evidence as it was in our view not germaine to the determination of the issues at hand.

In terms of the Recognition Agreement entered into by the parties on the 8th July 1992, which Agreement remain in force to date; clause 2.6 states :

"That the union undertakes to use its best efforts to deter workers from any form of unlawful industrial action and further undertakes to take all reasonable steps to end such unlawful action should it occur."

It was irresponsible in our view for the Respondents to tell the court that they are not at all responsible for the conduct of the workers on the 4th July, 1999, It is not denied that they called the meeting which we regrettably note was convened at night. Though we were told that this is the practice at the Respondent's undertaking, we have to question the prudence of such arrangement.

If the union officials were to be allowed to disassociate themselves from the conduct of employees following a meeting convened by them, we have to wonder how then they can be entrusted with the responsibility to convene meetings freely in what is a private estate without them guaranteeing that peace and tranquillity would prevail during such meetings and the procession that follow as the employees go back to their respective places of abode.

Clause 2.9 on the other hand partly states :

"That the Employer and the Union endorse the principle of freedom of association within the scope of the Industrial Relations Act....."

Clearly the parties enshrined their freedoms and responsibilities regarding issues of association and no party can be heard to derogate from the same. This would be counter productive to the entire process of recognition of unions and collective bargaining.

Moreover, Section 83 (1) and (2) provide that an employer shall not unreasonably deny union officials access to their premises for the lawful activities of the industry union. In granting such access, an employer may impose any restrictions as to time and place which are reasonable and necessary to avoid undue disruption of operations, or in the interests of safety.

We have been called to intervene in an area that ought and should be regulated by the parties with due regard to principles of reasonableness, good faith and the need to ensure mutual prosperity.

As we stated earlier the Respondents have no objection to the confirmation of the rule in terms of prayer 2 of the Notice of Application. We are of the view that this prayer is all encompassing to the extent that it prohibits the Respondents from inciting, instigating and participating in unlawful mass

action and acts of violence. It would be superfluous to confirm prayer 4 in addition thereof in view of the provisions of the Recognition Agreement that provide for mutual consultation in arranging and conducting lawful activities by the Respondents and their members at the Applicant's undertaking.

We will however amend prayer No. 2 to read as follows :

The Respondents are hereby interdicted and restrained from inciting, instigating and participating in unlawful mass action, acts of violence and activities that derogate from the terms of the Recognition Agreement,

There will be no order as to costs.

NDERI NDUMA

PRESIDENT – INDUSTRIAL COURT