

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 92/2000

In the matter between:

SWAZILAND AGRICULTURE AND

PLANTATION WORKERS UNION

APPLICANT

AND

THE ROYAL SWAZILAND SUGAR

CORPORATION LIMITED

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

Mr. M. Sibandze:

For Respondent

Mr. Martin S. Banda:

For Applicant

RULING

Respondent has raised objections in limine to an application brought on a certificate of urgency.

The first objection is that the applicant has failed to place sufficient facts before the court which establish a cause of action upon which the relief which Applicant seeks may be based.

The second objection is that the Applicant has not set out any ground upon which the court may find that the matter is urgent and that is in fact no urgency in the matter.

Thirdly, Respondent contend that the manner by which this application has been brought is not in compliance with Rule 10 of the Industrial Court rules as read with

2

Rule 6 (25) (a) (b) of the H/C rules.

Regarding the first point Applicant has placed the unlawful act in paragraph 10 of the founding affidavit as follows:

"10 The Respondent has ignored and failed to abide by the provisions of clauses 7, 9 and 10 of the Retrenchment/Redundancy Procedure Agreement dated 9/3/2000.....and is now threatening to effect retrenchments on the 31/3/2000 contrary to the parties agreement".

This paragraph clearly gives the court sufficient facts which establishes a cause of action. It is clear that Respondents are negotiating in bad faith. Article 10 (1) of the agreement points out as follows:

"10(1) Notification and consultation/negotiation with stake holders to be done at least two (2) months or

more prior to retrenchments effective date".

The alleged act of retrenchment by Respondents which seems to be imminent, if proved by evidence is a valid cause of action.

Regarding the second objection, the basis for the urgency is contained in paragraph 12 of Applicant's founding affidavit as follows:

"12 This matter is gravely urgent as the last time a similar environment was created by the Respondent and it led to serious acts of labour unrest, destruction of property and threat to life.

With all the respect there is, it is very difficult to understand the reasons stated above as creating urgency in this matter. To me it seems as if Applicant is saying that his client will cause Public Violence unless the court rules in his favour. This cannot be basis for an urgent application. All citizens of this country are presumed to be law abiding.

If members of Applicant embark on mass destruction of property, then this is the matter for the Law enforcers. The reasons advanced to treat this matter as urgent have no merit. If we were to order that this matter be treated as urgent on the grounds which have been advanced then every case now pending before court would qualify to be treated as such.

The prejudice that the Applicants might suffer by having to wait for a hearing in the ordinary course has not been made clear.

3

This point in limine succeeds. Applicant to set the matter in the normal course. (See SAPWU vs Apollo Services).

I will not deal with the last point for it automatically falls off.

Members concur.

K.P. NKAMBULE

JUDGE - INDUSTRIAL COURT