

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 152/99

In the matter between:

ISAAC MNGOMEZULU

AND 13 OTHERS

APPLICANT

and

ROYAL SWAZILAND SUGAR

CORPORATION (PTY) LTD

RESPONDENT

CORAM

KENNETH NKAMBULE:

JUDGE

DAN MANGO:

MEMBER

GILBERT NDZINISA:

MEMBER

MR. M. KHOZA:

FOR APPLICANT

MR. M. DLAMINI/

MR. M. SIBANDZE:

FOR RESPONDENT

RULING

8/9/00

The respondent in this matter has raised objection in limine in the following terms appearing in her reply -

1. That the Form B in terms of Rule 3(1) of the rules of this court, as submitted by the applicant, is vague and embarrassing in that non-applicable parts thereof had not been deleted, thereby placing respondent and this court at a disadvantage as to exactly what is alleged therein by the applicant.

2. That the certificate of unresolved dispute, Annexure 'A' to the applicant's particulars of claim do not specify in respect of which applicants, same for the first applicant, the said certificate was issued. In the premises the respondent and the court are placed at a disadvantage in that it is not clear which of the applicants reported a dispute in the prescribed manner.

2

3. That these are 15 applicants whereas the certificate of unresolved dispute refers only to the first and thirteen (13) others. In the premises the respondent and this court are placed at a disadvantage in that it is not clear which of the applicants reported a dispute in the prescribed manner, and therefore which of the applicants are properly before court.

4. The applicant's application does not comply with Rule 4 (1) of the rules of court.

5. That there is a misjoinder in that the relevant dismissal relates to 5 separate incidents involving separate applicants.

I propose to start with point No.1: It is clear on the face of Form B that applicant omitted to delete the inappropriate parts of the document. This is important as it becomes practically difficult to go through a document in this nature. However, such an omission has been remedied by the fact that there is a certificate of unresolved dispute filed of record and also such discrepancies have been eliminated as the applicants particulars of claim has stated the cause of action. This discrepancy is hereby condoned by the court taking into regard the late filing of the notice of intention to raise such a point.

Regarding the second point, Section 58 (1) of the Industrial Relations Act 1996 states:

"(1) A report of a dispute shall be made in writing, signed by the person making the report and shall specify:

(a) The parties to the dispute

(b) The address of each of the parties

© Particulars of all the issues in dispute stating as precisely as possible their nature and scope;"

It is clear from the face of Form B and the Certificate of Unresolved Dispute that this provision was not complied with.

There is no dispute that the names of the applicants were not provided for in the report of dispute file with the Labour Commissioner. On the report the applicant refers us to the particulars of claim. This is not connect.

It is therefore clear that the issues in dispute were not outlined in the report of dispute.

3

In this matter the applicant did not disclose the parties in the report, nor give their address; and on its own concession did not give the issues in dispute. This clearly shows non-compliance with Section 58 (1) of the Act.

There is merit in the respondent's objection because the applicant has, it appears, deliberately chosen to ignore the provisions of the Act but would like to proceed and be heard on the merits.

Default in complying with Section 58 of Part VIII of the Act of 1996 denies this court jurisdiction to hear the matter. In the present matter we are without such jurisdiction as the matter is improperly before us. It is necessary that the names of the parties and their addresses be disclosed in the report of dispute. The respondent has successfully established its objection. The applicant's application is thus dismissed.

There will be no need to deal with the other issues raised as they will not detract from the decision that has been made.

Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)