

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 181/99

In the matter between:

AMOS XULU

APPLICANT

AND VUNISA COTTON (PTY) LTD

RESPONDENT

CORAM

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

For Applicant:

Mr. Sicelo Dlamini

For Respondent:

Miss B. Mvubu

RULING

06. 03. 2000

The Respondent objects to the Applicant's application on the grounds that the Applicant did not report a dispute to the Commissioner of Labour after he had been granted extension of the period during which the dispute could be reported from six months to thirty (30) months calculated from 15th May 1995.

It is common cause that the Applicant was dismissed on the 5th May 1995. That he made a report to the Commissioner of Labour on the 5th December, 1995 well outside the Six (6) months period. On the 8th August 1997 the Minister of Enterprise authorised the Commissioner of Labour to extend the period during which the matter could be reported by 30 months calculated as from 15 May, 1995.

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After the extension of time was granted, no fresh report was made. The Respondents argue that this was contrary to the procedure provided for in Section 57 (1) of the Act which is peremptory.

M/s Mvubu relied on our decision in the matter of Luke Makhulu Khumalo and Swaziland Meat Industries Case No. 126/98 wherein I stated that in terms of Rule 3 (2), the Court lacked jurisdiction to entertain a dispute where the report was made to the Labour Commissioner well outside the period of the extension by the Minister of Enterprise and Employment.

The facts of that case differ with the present one only in as far as there was a report outside the extended period in the former, whereas in the latter there was no report at all after the extension of time.

Both parties agree that they attended a conciliation meeting convened by the Commissioner of Labour on the 6th November 1997.

In terms of Section 62 of the Industrial Relations Act the Commissioner of Labour has authority to intervene in a dispute prior to the making of a report. It is our view that where the Commissioner is aware of a dispute between parties and a formal report is not made within the period prescribed or within the period of extension by the Minister he has authority to intervene.

The Commissioner acted in violation of the statute by convening a conciliation meeting that was attended by both parties even though a formal report of the dispute had not been registered with his office after the extension of time.

The dispute was not resolved and a certificate of unresolved dispute was issued on the 12/2/99.

The provisions of Part VIII of the Act, though peremptory were not intended to be stumbling blocks to good labour relations and expedient resolution of disputes.

It would serve no purpose at all for a fresh report of dispute to be made where parties clearly were summoned by the Commissioner of Labour who attempted to resolve the dispute but failed.

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I find that the court has jurisdiction to entertain this application and the objection in limine must therefore fail.

There will be no order as to costs.

NDERI NDUMA

PRESIDENT INDUSTRIAL COURT