IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 249/2002

In the matter between:

SWAZILAND MANUFACTURING &

ALLIED WORKERS UNION APPLICANT

and

TOP PINE FURNISHERS (PTY) LTD RESPONDENT

CORAM

KENNETH NKAMBULE: JUDGE

DAN MANGO: MEMBER

GILBERT NDZINISA: MEMBER

FOR APPLICANT: MR. S. ZWANE

FOR RESPONDENT: MR. M. SIBANDZE

RULING

3/10/02

The applicant has brought an application for an order -

1. That the requirement of the Rules of this court relating to the normal time limits, notices and forms of service be dispensed with and the matter be treated as an urgent matter.

2. That a rule nisi hereby issue returnable on a date to be fixed by the court calling upon the respondent to show cause why the following orders should not be made final:

a) Interdicting and restraining the respondent from implementing the proposed redundancies pending the completion of a meaningful consultation exercise and agreement between the parties.

b) Declaring the conduct of the respondent unlawful, illegal and contrary to the spirit of the law, especially Section 40 of the Employment Act of 1980 as amended.

c) Directing the respondent to comply with Section 40 of the Employment Act.

d) Declaring the conduct of the respondent an unfair labour practice.

3. That a Rule Nisi in terms of paragraph 2 a) b) and c) operate as an interim order with immediate effect pending the finalisation of this matter and further directives from the court.
There is filed of record a launching affidavit in support of the application. The respondent has filed an answering affidavit in which objections in limine have been raised.

It is the respondent's contention that from the applicant's papers, the basis on which the applicant avers

that the matter be heard as one of urgency is contained in paragraph 13 of the applicant's founding affidavit, namely:

13.1 Respondent has already issued notices of redundancy to the applicant as evidenced by Annexure "SMZ" without complying with Section 40 of the Employment Act 1980 and the notices are intended to be effective on the 28th September 2002.

13.2 I humbly submit that it is of paramount importance that the above honourable court grants an order suspending the proposed redundancies and compel the respondent to comply with Section 40 of the Employment Act.

13.3 I am advised and humbly submit that should the court fail to grant an order as prayed for in the Notice of Motion, applicant's members shall suffer irreparable harm in that the respondent will be allowed to ignore a section tailor made for the protection of applicant's members against arbitrary redundancies by employer.

13.4 I humbly submit it would be in the interest of good Industrial Relations for this honourable court to issue an order suspending the proposed redundancies pending meaningful consultations between the parties with regards to the proposed redundancies.

On the first ground Mr. Nsibandze for the respondent submitted that the notice complained of by the applicant (Annex SMI to applicant's application) was served on applicant on the 28th of August 2002 and in terms of the same notice the redundancies, in the event they were not avoided were to take effect on the 28th September 2002. The applicant only brought the application for an interdict on 12th September 2002. That applicant's conduct shows that the application itself does not attach much urgency to the matter.

Secondly, the respondent contend that the reasons stated by the applicant in support of why this matter should be heard as an urgent one as contained in paragraph 13.1 to 13.4 of applicant's founding affidavit, namely that in the event that an interdict is not granted, an unfair dismissal of the applicant's members may result.

Mr. Nsibandze argues that this cannot be grounds for urgency. He states that all the matters pending in court today, some which have been pending for the past two years pertain to people whose services have been allegedly unfairly terminated. That if this matter could "jump the queue" and be heard before those matters are heard, litigants in these matters would be prejudiced.

Mr. Nsibandze referred the court to Swaziland Agricultural and Plantations Workers Union vs United Plantations (Swd) Ltd Industrial case No. 79/98 in support of his proposition.

For the applicant Mr. Zwane submitted that the applicants will suffer irreparable harm should the court fail to grant the interim order and respondent proceed with the redundancies.

The question is whether the requirements of urgency have been fulfilled. The fact that the applicants have received a notice of redundancies and that by the 28th September they will be terminated does not mean that they have no other remedy available. If the respondent is in breach of Section 40 of the Employment Act, then the applicant should report a dispute through the

Ministry of Labour and CMAC will deal with the matter in terms of the Industrial Relations Act.

We agree with Mr. Nsibandze that the basis on which the applicant avers that the matter be heard as one of urgency can never be a ground for dispensing with the normal rules of court.

This court therefore finds that there is no urgency in the matter.

We are not going to deal with the second point as this point alone disposes of the application. The respondent's first point in limine must succeed. The applicant's application is dismissed.

No order as to costs

Members agree.

KENNETH P. NKAMBULE

JUDGE - INDUSTRIAL COURT