IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 388/03

In the matter between:

SWAZILAND MANUFACTURING AND

PROCESSING STAFF ASSOCIATION APPLICANT

And

YKK ZIPPERS (SWAZILAND) (PTY) LIMITED RESPONDENT

CORAM:

NKOSINATHI NKONYANE : AJ. GILBERT NDZINISA : MEMBER

DAN MANGO : MEMBER

FOR APPLICANT : P. R. DUNSEITH

FOR RESPONDENT : M. M. SIBANDZE

RULING-22/10/04

The Applicant brought a Notice of Motion seeking for an order: directing the Respondent to engage in collective negotiations with the Applicant; directing the Respondent to convene the first negotiations meeting within seven days and

lastly; interdicting and restraining the Respondent from holding out to the Applicants or its members that it is no longer the employer of the employees within the Applicants bargaining unit.

The Respondent filed a notice of intention to oppose and its answering affidavit.

The Respondent raised points in limine and argued that the Application was not properly before court as the Applicant has failed to comply with Rule 3(2) of the Industrial Court Rules.
Rule 3(2) states as follows:

"The court may not take cognisance of any dispute which has not been reported or dealt with in accordance with Part V11 of the Act,"

The Respondent's attorney submitted that the reference to Part V11 of the Act, should be understood to mean Part VI11 of the Industrial Relations Act No. 1 of 2000. The Applicant's attorney argued that that interpretation would not be proper as it would amount to amending the rules by this court, which powers the court does not have.

There was no dispute that the matter before the court is a dispute in terms of the Industrial Relations Act No, 1 of 2000. The question that the court must decide is whether it is properly brought before it in terms of the rules of this court.

Applications in this court are brought in accordance with the provisions of Rule 3. The court has further powers in terms of Rule 9(1)(C), however, to hear Applications brought to it other than in terms of Rule 3 on good cause shown

why the court must condone none compliance with the Rules. One example of such Application is an urgent Application,

The matter before court is not an urgent Application. There is also no prayer for condonation for failure to comply with the Rules. There is also no prayer for further and/or alternative relief.
The court must now deal with the question whether it is proper to interpret the reference to Part V11 of the Act to mean Part V111 of the Industrial Relations Act of 2000. It is common cause that "Part V11 of the Act" is referring to the 1980 ACT which was repealed by the Industrial Relations Act of 1996. The 1996 Act was in turn repealed by the current Industrial Relations Act of 2000. In both these Acts the Rules as enacted under the 1980 Act were saved as whole.

Part V11 of Act No.4 of 1980 was the section that dealt with disputes procedure. The section that deals with disputes procedure in the current Act of 2000 is Part V111. The rules having been saved as a whole by the 2000 Act, the court must give an interpretation that will uphold them rather than one that will render them ineffective. The only interpretation that will have the effect of rendering the rules effective is the one that says" Part V11 of the Act" is to be read as meaning Part V111 of the current Act, as it is that section in the current Act that deals with disputes procedure.

This court had occasion to deal with a similar question in the case of Magalela Ngwenya and Ministry of Agriculture & Co-operatives 1st Respondent, and Attorney-General 2nd Respondent, Case No. 80/2001. In that case the Respondents also raised a point in limine objecting to the Applicant's failure to follow the provisions of Part V111 of the Industrial Relations Act of 2000. That matter, like the one before court, was also not brought under a certificate of urgency.

The court in that case upheld the objection raised in limine. The court also made a finding that when reading Rule 3(2), Part V11 is to be read as referring Part V111 of the 2000 Act.

We do not agree with the Applicant's attorney that such a reading of the rules amounts to amending the rules.

For the abovementioned reasons, the point in limine is upheld. The Application is accordingly dismissed. No order for costs is made.

The members agree.

NKOSINATHI NKONYANE

ACTING JUDGE- INDUSTRIAL COURT