

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

In the matter between:

CASE NO. 86/2005

COMMERCIAL AND ALLIED WORKERS

UNION OF SWAZILAND            Applicant

and

THE MALL SPAR                    Respondent

CORAM:

N. NKONYANE A-J

D. MANGO :MEMBER

G. NDZINISA:MEMBER

FOR APPLICANT: M. GINA

FOR RESPONDENT:M. SIBANDZE

RULING ON POINTS IN LIMINE - 08/03/05

This matter is before the court on a certificate of urgency. It was brought before the court on the 3<sup>rd</sup>

March 2005.

The Applicant is seeking an order in the following terms:

- "1. Dispensing with the usual forms and procedures and time limits relating to the institution of proceedings and allowing this matter to be heard as a matter of urgency.
2. That the Respondent be ordered to restore the operation of the Recognition and Procedural Agreement entered into on the 31<sup>st</sup> December 2002 with the Applicant.
3. That the Respondent be and hereby interdicted from establishing a Works Council Committee within its establishment
4. That the Respondent be ordered to pay the Applicant the sum of Six Hundred and Sixty Five Emalangenzi (E665.00) in respect of Applicant membership subscription fees for the month of February 2005, which Respondent ceased collecting through stop order.
5. That the Respondent be and hereby interdicted from approaching Applicant members with promises of better employment condition upon resignation from Applicant
6. That the Respondent be further and hereby interdicted from victimizing/intimidating and or harassing John Dlamini the Secretary General of the Applicant in any way during his course of employment with Respondent.
7. That all the above operate with immediate interim effect pending the return date to be appointed by the Honourable Court.
8. Costs be awarded against the Respondent only in the event that the application is opposed.
9. Granting further and/or alternative relief."

The application is grounded on the Founding Affidavit of Abednigo Ndlovu who stated that he is the National president of the Applicant Union.

The Respondent's attorney raised points in limine.

One of the points raised was that urgency had not been established and therefore the court should dismiss the application.

The Applicant in its Founding Affidavit relies for urgency under paragraph 13. That paragraph reads as follows:

" 13 The matter is urgent as Applicant membership will suffer irreparable harm by being denied their right to associate freely. And further the introduction of the Works Council shall be infact contrary with the Industrial Relations Act No. 1 of 2000."

During the submissions and from the papers before the court, it became clear

that the basis of the application was the respondent's conduct of the 21<sup>st</sup> January 2005 of withdrawing from the Recognition and Procedural Agreement entered into by the parties.

The Applicant's representative was unable to come out clear as to why did the union not take the matter up immediately after they had received the notice of withdrawal from the Recognition Agreement by the Respondent.

Mr. Gina argued on behalf of the Respondent that they did not take up the matter immediately because

it was being discussed following the report of a dispute by the Respondent.

Paragraph 10 of the Founding Affidavit states that:

"10 The Respondent has since cancelled the stop order facility as from the month of February 2005."

It seems that the union had brought the matter to court on an urgent basis just because the Respondent has stopped deducting the monthly contributions from the workers.

It seems to the court that the union is concerned only about its financial welfare and not about the welfare of the workers that it represents.

From the applicant's papers, it appears that the dispute was reported by the Respondent on the 21<sup>st</sup> January 2005, the same day that it withdrew from the Recognition Agreement. There was all the reason for the Applicant to act immediately and seek the court's intervention as the matter was before a forum that is recognized by this court and also by the Industrial Relations Act No. 1 of 2000.

The court is very concerned that employers and employees do not seem to follow the code of practice as found in the Industrial Relations Act.

The court is urging all role players at the workplace to adopt and follow the Code of Practice.

in this matter, the source of the grievance having arisen on 21<sup>st</sup> January 2005, no good reason has been brought forward why the Applicant had to wait until 3<sup>rd</sup> March 2005 to bring the matter to the court on a certificate of urgency.

It is the court's finding that no good grounds exist for the court to hear the matter as an urgent application.

There will be no need for the court to address the other points of law raised herein, the court having found that urgency has not been established.

The application is accordingly dismissed with no order as to costs.

The members agree.

NKOSINATHI NKONYANE A-J

INDUSTRIAL COURT