IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 225/05

In the matter between:

TREASURE MAPHANGA APPLICANT

and

WOOLWORTHS (MANZINI) RESPONDENT

CORAM

N. NKONYANE: ACTING JUDGE

G. NDZINISA: MEMBER

D. MANGO: MEMBER

FOR THE APPLICANT: MR. Z. SHABANGU

FOR THE RESPONDENT: MR. M. SEBANDZE

RULING ON POINT OF LAW 12.09.05

The applicant brought an application for determination of an unresolved dispute before this court.

She claims that the respondent unlawfully and unfairly terminated her service on the 29th August 2002.

In its reply to the applicant's claim, the respondent also raised a point in limine.

The court is presently called upon to make a ruling on the point in limine raised by the respondent.

The point in limine raised by the respondent is that the application is fatally defective because the applicant has failed to cite the respondent with sufficient particularity for the court to be satisfied that the respondent has the locus standi to sue and be sued in its own name, and that such an allegation has not been made in the papers.

The respondent therefore asks the court to dismiss the application with costs.

The applicant opposed the application. It was argued on her behalf that the respondent has

been correctly cited in terms of rule 14(1) of the High Court rules. It was further argued on her behalf that the point in limine should be dismissed with costs.

It was argued on behalf of the applicant that there was nothing ex facie the papers of the applicant that suggested that the respondent had been wrongly cited and that the respondent had been cited as a firm.

The respondent in support of its submissions referred the court to the case of SPOORNET V. WATSON 1994 (I) S.A. 513 (W). The court in that case had occasion to refer to Rule 17 and Rule 14 of the Uniform Rules of Court (South Africa). These Rules are worded in similar language with our High Court Rules.

In the Spoomet case the court dismissed the application for default judgement because the court found that there were no sufficient details which would enable the court and the defendant to establish whether or not the plaintiff had the capacity to sue, contrary to the requirement of Rule 17(4) (b).

The court went on to point out at page 514 that: -

"The 'associations', 'firms' and 'partnerships' referred to in Rule 14 are not, because of the implications of that Rule, excused from complying with Rule 7(4)(b). To simply describe a plaintiff as, for example, 'Eureka', without stating that it is an association or a firm will simply not be in compliance with Rule 17(4) (b)."

It was argued on behalf of the respondent that Rule 14 has been complied with as the applicant did mention in paragraph 2 that the respondent is a business entity. It was argued that the mention of the word "business" was sufficient as Rule 14(1) describes a "Firm" as "... a business, including a business carried on by a body corporate or carried on by the sole proprietor thereof under a name other than its own."

In the case of DF SCOTT (EP) (PTY) LTDVGOLDEN VALLEY SUPERMARKET [2001] 1 ALL S.A. 303 (E), court there also had occasion to deal with a matter involving the meaning and effect of Rule 14 and Rule 54 of the Magistrate's Court Rules enabling the plaintiff to sue a firm or business in its own name.

In that case the court presided by KROON J AND GOVENDER AJ ON PAGE 308 cited with approval a passage in the case of CUPEDO V. KINGS LODGE HOTEL [1999] 3 ALL S.A. 578 (E) that:

"Rule 14 is a procedural remedy whereby a litigant can be brought to court

On page 309 the court further pointed out that:

"A trade name is, after all, the name by which the owner of a business holds himself out to the public and by which that business is identified."

HARMS, LTC (2001) "Civil Procedure in the Supreme Court" dealing with Rule 14 on page

123 states that: -

"The rule is designed to simplify and to facilitate actions and applications by or against partnerships, firms and associations which at common law cannot generally sue or be sued in their own names apart from the members constituting them. "

Rule 14 therefore relieves the applicant of the duty of alleging the name of the proprietor. If there arises the need to know whom the proprietor was at the relevant date, that is covered by the provisions of Rule 14(5) (a).

It is clear therefore that in terms of Rule 14, a partnership, firm or association has locus standi to sue and be sued in its own name.

What seemed to be the contention in this case was the failure to use the word firm or company when describing the respondent, so that it could be clear ex facie the papers that it has the requisite locus standi.

The respondent was referred to as "a business entity engaged in the selling of clothing and whose principal place of business is situated at Bhunu Mall, Manzini District of Manzini".

Mr. Shabangu argued that the word 'business' also means a firm and that therefore there was no defect on the papers.

The CONCISE OXFORD DICTIONARY (1995) 9th edition at page 196 defines business, inter alia, as "8. a commercial house or firm" The judges in the DF SCOTT (EP) (PTY) LTD case also used the words interchangeably. They referred to the respondent as a firm or business. Furthermore, Rule 14(1) defines a firm as a business.

The court will therefore come to the conclusion that the description of the respondent as "a business entity" sufficiently described the respondentterms of Rule 14 of the High Court Rules.

If it turns out that the current owner of the business was not the owner at the relevant time, it is open to the applicant to invoke Rule 14(5).

Taking into account all the foregoing observations, the court will dismiss the point in limine raised by the respondent.

No order for cost is made.

The members agree.

N. NKONYANE

ACTING JUDGE - INDUSTRIAL COURT