

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO.287/04

In the matter between:

SWAZILAND MANUFACTURING
AND PROCESSING INDUSTRY STAFF
ASSOCIATION

APPLICANT

and

SWAZI TIMBER PRODUCTS (PTY) LTD

RESPONDENT

CORAM:

NKOSINATHI NKONYANE : A.J.

GILBERT NDZINISA : MEMBER

DAN MANGO : MEMBER

FOR APPLICANT : MR. SELBY DLAMINI

FOR APPLICANT : MR. SIFISO NSIBANDE

JUDGEMENT -02/02/05

This is an urgent Application brought by the Applicant against the Respondent for an order in the following terms :-

"(1) Dispensing with the normal provisions of the rules of this Honourable Court as relate to form, service and time limits and hearing this matter as an urgent one.

(2) That an order be and is hereby issued directing the Respondent to pay terminal retrenchment benefits of Applicant members amounting to One Hundred and Seventy Nine Thousand One

Hundred and Ninety One Emalangi and Twelve Cents (E179,191.12), covering salaries for August 2004.

(3) Interdicting and restraining Respondent from disposing removing all immovable and movable properties and assets within Respondent premises pending the payment of the monies under prayer (2).

(2) Directing that prayers 2 and 3 operate with immediate and interim effect returnable on a date to be determined by the above Honourable Court.

(4) Costs of suit:-

(5) Further and /or alternative relief."

The evidence before the court revealed that the Respondent engaged in a retrenchment exercise as from December 2003. Since that period, over 300 employees have been laid off.

Some of the retrenched employees agreed to be paid their terminal benefits over a period of 8 to 12 months.

Some of the retrenched employees however did not want that arrangement, but wanted to be paid their terminal benefits at once, hence this present Application before the court.

It was argued on behalf of the Respondent that the spreading out of the payments was the most viable means of settling in full, the amounts due to each creditor of the Respondent.

It was further argued on behalf of the Respondent that if it were to be made to pay the terminal benefits at once, the company would have to go the route of liquidation wherein the payment in full of the terminal benefits would not be guaranteed.

On behalf of the Applicant it was argued that the retrenched employees feared that the Respondent would disappear without having fully paid them.

The evidence however showed that the Respondent has a lease agreement for 12 months with SIDC. The evidence also showed that the Respondent has machinery worth E3,000,000:00 at its premises.

The Respondent's attorney told the court that as a guarantee, the court may make an order restraining the Respondent from disposing or removing the machinery.

The Applicants' Representative made an offer of four months. This offer was not accepted by the Respondent.

The court must now make a final ruling on this matter. The Respondent's attorney asked the court to exercise its discretion in this matter and consider that it would not be a favourable option to the employees if the company was to undergo liquidation.

In this matter the employees have made their choice. They want to be paid a lump sum, or the payment to be spread over four months only.

No financial statement was shown to the court. The court however believes that the retrenchment exercise was genuinely carried out and based on reasons provided by the law because the union was involved.

The court believes that it is in the best interest of the employees that they receive their payments in full. If the payment in a lump sum would mean that the company will undergo liquidation, that would not be in their best interest as they will have to compete with creditors who may be preferred. They will end up not receiving their full pay.

There is evidence that some of the payments are being spread over a period of eight to twelve months. If that arrangement guarantees payment in full, it is not clear why the employees would not opt for it.

Taking into account all the above factors, the court will make an order that the Respondent pays all the terminal benefits of the Applicant's members within a period of eight months from the date of this judgement, and that the Respondent is not to remove or dispose of the machinery until all the affected employees have been paid in full all their terminal benefits.

No order for costs is made.

The members agree.

N. NKONYANE

ACTING JUDGE – INDUSTRIAL COURT