

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 161/07

In the matter between:

**MEDIA WORKERS UNION OF SWAZILAND
On behalf of HLENGIWE DLAMINI**

APPLICANT

And

**AFRICAN ECHO (PTY) LTD T/A
THE TIMES OF SWAZILAND**

RESPONDENT

CORAM:

NKOSINATHI NKONYANE: JUDGE

DAN MANGO: MEMBER

GILBERT NDZINISA: MEMBER

FOR APPLICANT: M. SIBANDZE

FOR RESPONDENT: L. MNGOMEZULU

RULING 22.06.07

[1] This is an urgent application that was instituted by the applicant against the respondent. It first came before the court on the 16th April 2007.

[2] The applicant is seeking an interdict against the respondent.

[3] The respondent has however raised two preliminary points, namely; that the applicant has no *locus standi in judicio* and secondly; that the deponent in the founding affidavit, Hlengiwe Dlamini has not stated that she was authorized to bring the application in the name of the Trade Union.

[4] The court will deal with the points *ad seriatim*.

LOCUS STANDI IN JUDICIO

The applicant in this matter is cited as "**Media Workers Union of Swaziland on behalf of Hlengiwe Dlamini.**"

[5] This ambiguity is clarified in paragraph 2 of the founding affidavit where the deponent, Hlengiwe Dlamini stated that the applicant is the Media Workers Union of Swaziland. In paragraph 45 however she stated that;

"I have a clear right to the order sought in terms of Section 29 of the Employment Act and the provisions of the Constitution of Swaziland."

[6] Section 29 of the Employment Acts states that;

'No employer shall, in any contract of employment between himself and an employee discriminate against any person or between employees on grounds of race, colour, religion, marital status, sex, national origin, tribal or clan extraction political affiliation or social status. "

[7] On the one hand, the deponent says the applicant is the Union, on the other she says, she, and not the Union, has a clear right to the order sought in terms of Section 29 of the Employment Act.

[8] Section 29 of the Employment Act deals with an employer/employee relationship. If the deponent has a clear right in terms of that section, clearly the Union does not have such a right as it is not an employee of the respondent.

[9] The law is trite as to the question of *locus standi in judicio*. **HERBSTEIN AND**

WINSEN in their work "THE CIVIL PRACTICE OF THE SUPREME COURT OF SOUTH AFRICA" (1977) 4th edition at page 1079 state that;

"The applicant will have locus standi in judicio if the right on which he bases his claim for an interdict is one that he personally enjoys, or if he has a sufficient interest in the person or persons whose rights he seeks to protect and it is impossible or impractical for those person to approach the court themselves. "

[10] In the present case it has not been shown that it is impossible or impractical for the deponent to approach the court on her own.

It is also not clear what interest does the Union want to protect. If the Union has any interest at all, it is clearly remote and it lies in the fact that the deponent is its member and the Union would lose the benefit of the subscriptions if she were to be dismissed. That interest is remote and cannot found *locus standi in judicio* for the Union.

At page 1080 **Herbstein** and **Van Winsen** state further that;

"When, however, an organization is protecting its own interests, as distinct from those of its members it will clearly have locus standi to claim an interdict. "

The court was referred to various clauses in the draft constitution of the Union and it was argued that those clauses empower the Union to institute legal proceedings on behalf of its members.

[14] Rule 3.8 of the Union's constitution states that one of the objects of the Union is to sue and defend in the interests of the Union. Rule 3.15 states that the Union may take any other lawful action or adopt any other lawful method for the furtherance of the interests of the Union. Rule 17.2.7 empowers the Secretary General to institute legal action on behalf of the Union.

[15] There is nowhere in the Union's Constitution where it is empowered to take legal action on behalf of its member. The only closer rule to that is Rule 3.10, which states that one of the Union's objectives is to provide legal aid to members whose

subscriptions or other Union dues are not more than three months in arrears.

[16] Furthermore, **LTC HARMS** in his book, "**CIVIL PROCEDURE IN THE SUPREME COURT**" (2001) at page 55 paragraph C I states that;

"It is a requirement that a party to litigation must have a direct and substantial interest in the right which is the subject matter of the litigation and in the outcome of the litigation. An indirect financial interest does not suffice. It is then said that if a party does not comply with this requirement he lacks locus standi. "

[17] It was argued that the Union does have an interest as the deponent claims that she is being victimized for her involvement in Union activities. That argument however falls away as it has not been shown that it is impossible or impractical for the deponent to approach the court on her own.

[18] A similar objection was taken and was upheld by this court in two previous cases. These cases are that of **SWAZILAND MANUFACTURING AND ALLIED WORKERS UNION AND 99 OTHERS V. NATEX (SWAZILAND) (PTY) LIMITED** (IC) case no.76/97 and **SWAZILAND MANUFACTURING AND ALLIED WORKERS UNION V. SWAZI PAPER MILLS** (IC) case no. 93/99.

[19] In both cases the court found that the Union applicants had no direct or substantial interest in the subject-matter of the applications. In the **NATEX** case the court having found that the Union had no *locus standi*, it allowed the matter to proceed to trial on the merits as the 2nd applicants remained. In the **SWAZI PAPER MILLS** case the application was dismissed as it meant there was no applicant the court having found that the applicant Union had no *locus standi*.

Authority to bring application in the name of the Union:

[20] There is nowhere in the Union's constitution where a shop steward is empowered to institute legal proceedings in the name of the Union or on its behalf. Such authority is

vested in the Secretary-General in terms of Rule 17.2.7 of the Union's draft constitution.

[21] Taking into account all the authorities referred to above, it follows that the court must find that the Union has no *locus standi in judicio*.

[22] The application is accordingly dismissed.

No order for costs is made.

NKOSINATHI NKONYANE
JUDGE INDUSTRIAL COURT