

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 312/2007**

In the matter between

**TOWN TOPS TRADING (PTY) LTD  
T/A SUPER SAVERS**

**Applicant**

**and**

**TEMALANGENI DLAMINI**

**1<sup>st</sup> Respondent**

**DEPUTY SHERIFF - HHOHHO N.O.  
BHEKITHEMBA P. DLAMINI**

**2<sup>nd</sup> Respondent**

**In Re:**

**TEMALANGENI DLAMINI**

**Applicant**

**and**

**TOWN TOPS TRADINGS (PTY) LTD  
T/A SUPERS SAVERS**

**Respondent**

**CORAM:**

**P. R. DUNSEITH :            PRESIDENT**

**JOSIAH YENDE:            MEMBER**

**NICHOLAS MANANA:        MEMBER**

**FOR APPLICANT**

**MZWANDILE DLAMINI**

**FOR RESPONDENT**

**SELBY DLAMINI**

**J U D G E M E N T - 13/07/07**

1. After the court heard arguments on 11 July 2007, this application was dismissed with costs and we promised to deliver our reasons on 13<sup>th</sup> July 2007. These are our reasons for dismissing the application.

2. The background of this matter reveals an Applicant that finds itself in difficulty because it never reacted appropriately to legal process.

3. On 2<sup>nd</sup> March 2007 the Applicant failed to attend a meeting at CMAC for the conciliation of a dispute reported by the Respondent. After satisfying himself that the Applicant was properly notified to attend the meeting, the Commissioner referred the dispute to arbitration as per section 81(7) of the Industrial Relations Act 2000 (as amended). A default arbitration award was thereafter entered against the Applicant for payment of the sum of E14,707.26.

4. The Applicant applied to the Executive Director of CMAC for this default award to be rescinded. The rescission application was dismissed on the 1<sup>st</sup> June 2007.

5. The Respondent applied to the court for the arbitration award to be made an order of court. The application was postponed to 29<sup>th</sup> June 2007 due to non-service on the Applicant. On the 27<sup>th</sup> June 2007 the Applicant was duly served with the application and notified to attend court on 29<sup>th</sup> June 2007.

6. On 29 June 2007 the Applicant did not attend court to oppose the application, and the default award was thereupon made an order of court. A writ of execution was issued on the 2<sup>nd</sup> July 2007.

7. The Applicant has now applied to court on a certificate of urgency for an interim order staying execution of the writ, and a final order rescinding the court order granted on 29<sup>th</sup> June 2007 (mistakenly referred to as 15<sup>th</sup> March 2007 in the notice of motion.)

8. The Applicant raises various technical objections to the granting of the court order on 29<sup>th</sup> June 2007, alleging that:

8.1. the application was defective because the notice does not state the time for filing notice of intention to oppose;

8.2. the notice given was very short;

8.3. the notice was not served by the Sheriff or his deputy.

9. The Applicant states that it had good grounds for opposing the default award being made an order of court because the 1<sup>st</sup> Respondent was never employed by it and it was wrongly cited to attend at CMAC for conciliation.

10. The Industrial Court is not strictly bound by the rules of procedure which apply in civil proceedings and may disregard any technical irregularity which does not or is not likely to result in a miscarriage of justice - see section 11 (1) of the Industrial Relations Act, 2000 (as amended).

11. The Applicant acknowledges having received the notice on 27 June 2007. The court was satisfied on 29<sup>th</sup> June 2007 that the Applicant was duly served. The Applicant failed to appear to oppose the application, nor did it take any steps to follow up the matter until confronted by a writ of execution.

12. The rules of court do not require notice to make an arbitration award an order of court to be in any particular form. The court avoids undue formality and merely satisfies itself that adequate notice has been given to enable an affected party to appear in court if it wishes to oppose a proceeding. Nor does the court insist that process be served by the Sheriff or his deputy. Service by a union employee, as in this case, is sufficient, particularly where the Applicant confirms receipt of the process.

13. The Applicant has not advanced any sufficient reason why the court should not have made the default award an order of court. This court has no jurisdiction to review, or hear an appeal from, a decision of an arbitrator appointed by CMAC. The Applicant has a right to take the default award (and the refusal to rescind such an award) on review to the High Court - see section 19 (5) of the Act. Failing any lawful challenge to the award itself, there is no basis upon which this court could have refused to make the award an order of court, or should now stay execution upon the award.

The members agree.

**P. R. DUNSEITH  
PRESIDENT OF THE INDUSTRIAL COURT**