IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 144/08

In the matter between:

MAXIPREST TYRES (PTY) LTD **APPLICANT**

And

SWAZILAND AMALGAMATED TRADE UNION **RESPONDENT**

CORAM;

NKOSINATHINKONYANE: JUDGE

DAN MANGO: MEMBER

GILBERT NDZINISA: MEMBER

FOR APPLICANT: S. MNISI

FOR RESPONDENT: V. DLAMINI

JUDGEMENT 03.04.08

[1]The applicant brought an urgent application on Friday 28th March 2007 for an order declaring the intended industrial action by the respondent scheduled for 31st March 2007 to be in violation of the Recognition Agreement between the parties and therefore unlawful.

[2] The applicant is also seeking an order directing the respondent to comply with the provisions of the Recognition Agreement in relation to settling of disputes of interest between the parties and that the respondent be restrained and/or interdicted from proceeding with the industrial action on Monday 31st March 2008.

[3] The respondent filed a Notice to raise points of law. The respondent in the Notice raised the following points of law;

3.1. That *the matter is not urgent and that if any urgency exists, it has been self-created by the applicant.*

3.2. *That the applicant has dismally failed to make sufficient averments justifying the dispensing with this Hounourable Court's rules.*

3.3. *That the applicant has failed to satisfy any of the requirements of an interdict, either a temporary or final interdict.*

[4] The main argument by the applicant that the intended strike action is illegal is found in paragraphs 11, 12 and 15 of its founding affidavit. These paragraphs contain the following averments:

> *4.1. "11. According to the Recognition Agreement the party declaring the dispute must state the nature and reason of*

the dispute, the respective position of the parties and proposals for resolving the dispute.

4.2. 12. The respondent in its letter declaring the dispute did not state the proposals for resolving the dispute. This omission I submit denied the parties an opportunity to weigh other options than engaging in a strike action.

4.3. 15. Further, the Recognition Agreement provides that there should be a meeting between management and union within five (5) working days to attempt to resolve the dispute, that, after declaring the dispute. The meeting did not take place."

[5] The Recognition Agreement was annexed to the application and is marked "Ml". Article 17.2 is the one that deals with disputes of interest. This article states what the party declaring the dispute must do. It says that that party must state the following in writing;

5.1. "(if) The nature and reason of the dispute.

5.2. (iii) The *respective position of the parties.*

5.3. (iv) The proposals for resolving the dispute

5.4. (v) The Director of Human Resources or his designate, and the IR Department shall meet with the Chairperson, Deputy chairperson, Secretary, Treasurer of the Executive Committee including the full time shop steward if applicable, within 5 (five) working days to attempt to resolve the dispute.

5.5. (vi) In the event that the dispute remains unresolved, the dispute may be referred by mutual agreement, to mediation under the auspices of CMAC/private dispute resolution, in which case the parties agree to share the costs if any.

(vii) Should mediation fail to resolve the dispute, the

party declaring the dispute shall exercise their right to embark on protected industrial action in line with the relevant provisions of the Industrial Relations Act, 2000 as amended, and according to any relevant agreement.

(viii) The parties are committed to a negotiated resolution throughout protected industrial action.

[6] The applicant argued that the respondent did not state the proposals for resolving the dispute and that therefore the intended strike is illegal as it violates the provisions of the collective Agreement. We do not agree with this submission by the applicant. In the letter declaring the dispute marked "M3"and dated 9th November 2007, it is stated in the last paragraph thereof that;

"We therefore, propose that management addresses the workers demands as serious compromises have been made. "

[7] It is clear from this letter that the respondent did make a proposal for resolving the dispute. The respondent proposed a meeting with management. Management was therefore in terms of article 17.2 (v) supposed to make sure that the said meeting does take place within five days. The provisions of article 17.2 (v) are clear and peremptory, as they provide that management "shall" meet with the members of the respondent.

[8] In its reply to the respondent's letter of 9th November 2007 the applicant in its letter dated 25th March 2008 asked the respondent to reply before 31st March 2008. When the matter was in court on Friday 28th March 2007 the parties indicated that they would meet over the weekend. The matter was thus postponed until Monday 31st March 2008 to allow the parties to meet. On Monday, the court was informed that the parties did meet but there was no agreement reached.

[9] From the evidence before the court it was clear that the respondent has followed all the steps that need to be taken before one can engage in a lawful strike in terms of Section 86 of the Industrial Relations Act of 2000 as amended. At any rate it is not the applicant's case that the intended strike action is unlawful because it is in violation of the Industrial Relations Act.

[10] When a party has followed all the legal steps in order to engage in a lawful strike, it is difficult to understand on what basis would the court thereafter declare the strike as being unlawful. It is the view of the court that the letter by the respondent declaring the dispute adequately complies with the provisions of article 17.2 of the Collective Agreement. We agree that it may not have been drafted in the manner and style that the applicant would prefer. That however is not a good ground to have the intended strike declared unlawful.

[11] There will be no need to refer this matter for argument on the merits as it is clear that the application will not succeed.

[12] Taking into account all submissions made before the court and all the circumstances of this case, the application will be dismissed.

[13] There is no order as to costs.

The members agree.

NKOSINATHI NKQNYANE

JUDGE - INDUSTRIAL COURT