

IN THE INDUSTRIAL COURT OF SWAZILAND

Held at Mbabane

Case No.1 16/08

In the matter between:

LAWRENCE T. DLAMINI

APPLICANT

AND

GEMORE PARTS AND ACCESSORIES

RESPONDENT

CORAM:

SIFISO NSIBANDE : ACTING JUDGE

PHUMELELE THWALA: MEMBER

ANDREAS NKAMBULE: MEMBER

For Applicant

: Mr D. Msibi

For Respondent

: Mr H. Ngwenya

RULING ON POINTS IN LIMINE - 5¹¹ MAY, 2008

1] The Applicant filed an application for determination of dispute. In response the Respondent raised six (6) points in *limine* as follows;

1. That the application was fatally defective in that it was neither signed by the Applicant nor his representative as required by Rule 7 (2) of the Rules of Court;
2. That the application had been overtaken by events in that Respondent was sold to a third party on or about 28th September, 2007;
3. That as a result of the sale of Respondent the application would be an academic exercise since judgment, if granted in favour of the Applicant, could not be enforced.
4. That the application was lodged in terms of the Industrial Court Rules of 1984 instead of the Rules of 2007;
5. That the Respondent is wrongly cited.
6. That the Applicant lodged form l/c:c confirming that the application was being brought in terms of the 1984 Rules of Court which had been repealed.

2] When the matter was called for argument, the Respondent's representative argued points 1, 4

and 6 together. He argued that because the Applicant had brought the application in terms of the 1984 Rules of Court when they had been repealed and new rules of court promulgated, the matter was before court improperly and the court should not take cognisance of it. He further argued that Rule 7 (2) of the Rules of Court requires that the application be signed by either the applicant or his/her representative. In this case, the application was unsigned. He argued that the applicant's failure to sign the application renders the application totally defective and it ought not to be heard by the court.

3] Rule 7 (2) on which the Respondent relies reads thus: "The application shall be signed by or on behalf of the issuing party and shall contain...."

4] In reply, the Applicant conceded that the application was not signed and that it had been brought in terms of the repealed Rules of Court. He argued that since the Registrar had accepted the application in its current form, the court should accept it as well.

5] It is clear that the Applicant has not brought his application in terms of the current Rules of Court. It is the Court's decision that the unsigned application, in particular can not be said to be properly before the court. The fact that the Registrar accepted the application and allocated it a case number and caused it to be brought before the court does not assist the applicant. The responsibility lies with the Applicant to ensure that his

papers are in order. He can not rely on the Registrar's failure to spot the defect in his papers. For the above reason this point of law succeeds. I will not make any comment regarding the other points raised because this point alone disposes of the application. The application is dismissed. The applicant is granted leave to file a new application.

No order is made as to costs.

The members agree.

SIFISO NSIBANDE A.J.
INDUSTRIAL COURT