

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 91/08**

In the matter between:

**MASTER GARMENTS (PTY) LTD**

**Applicant**

and

**PETROS MAVIMBELA**

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

**THE COMMISSIONER OF CMAC NO.**

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

In re:

**PETROS MAVIMBELA**

**Applicant**

and

**MASTER GARMENTS (PTY) LTD**

**Respondent**

**CORAM:**

**P. R. DUNSEITH:     PRESIDENT**

**JOSIAH YENDE:     MEMBER**

**NICHOLAS MANANA:     MEMBER**

**FOR APPLICANT: S. DLAMINI**

**FOR RESPONDENT: G. MASUKU**

## **J U D G E M E N T - 4/06/08**

1. On the 31 March 2008 the President of the Industrial Court referred the main application to arbitration under the auspices of CMAC in terms of the powers vested in him by section 85 (2) as read with section 8 (8) of the Industrial Relations Act 2000 (as amended).
2. This referral was made on the application of the 1<sup>st</sup> Respondent, who is the Applicant in the main application. The present Applicant did not appear to oppose the referral.
3. At the time the President referred the matter to arbitration, the main application also was not opposed and had been referred to the Registrar of the Industrial Court for allocation of an ex parte trial date.
4. The Applicant has now applied to the Industrial Court for an order rescinding and/or setting aside the referral to arbitration, and staying the arbitration proceedings in the interim.
5. The court enquired from Mr. Masuku, who appears for the Applicant, whether his intention was to bring the application for rescission before the President of the Court, who granted the referral, or before the Industrial Court. Mr. Masuku confirmed that the application is pending before the Industrial Court.
6. The Industrial Court is constituted by a judge and two nominated members. Where the President of the Court acts alone in terms of the powers vested in him under section 85 (2) and 8 (8) of the Act, he does so in an administrative capacity and not as a court of law.  
  

**See SMAWU v Swaziland Bottling Company 1987-1995 (2) SLR 62**
7. The present application seeks a court order setting aside the decision of the President in his exercise of administrative powers. It is not proper that the President should preside over the court hearing such an application.
8. The matter is referred for hearing before the Industrial Court presided over by a

different judge. The matter may be set down for hearing on a date to be arranged with the Registrar.

The members agree.

**PETER R. DUNSEITH**

**PRESIDENT OF THE INDUSTRIAL COURT**