IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 263/08

In the matter between:

SWAZILAND MANUFACTURING & ALLIED WORKERS UNION **APPLICANT**

And

YKK SOUTHERN AFRICA (PTY) LTD **RESPONDENT**

CORAM:

NKOSINATHI NKONYANE: **JUDGE**

DAN MANGO: **MEMBER**

GILBERT NDZINISA: **MEMBER**

FOR APPLICANT: **S. MASUKU**

FOR RESPONDENT: **M. SIBANDZE**

JUDGEMENT ON POINTS OF LAW
27.06.08

[1] This is an urgent application brought by the applicant against the respondent for an order;

> "1. Dispensing with the usual forms and procedures and time limits related to the institution of proceedings and allowing this matter to be heard as a matter of urgency.
>
> 2. That a *rule nisi* be issued with immediate and interim effect, calling upon the respondent to show cause on a date to be appointed by the above Honourable Court, why an order in the following terms should

not be made final:

2.1. That the intended staff lay-off is declared null and void and of no force and effect.

2.2. That all permanent employees who have been given notices of lay-offs: such notices be declared null and void and those employees are recalled back to work with immediate effect.

2.3. Those parties (Applicant and Respondent) engage in meaningful consultations before the issuance of notices of lay-off to Applicant members.

2.4. That the applicant members placed on unlawful lay-off are paid all their remunerations they would have been paid if they (applicant members) were not placed on such a lay-off.

2.5. That the Senior Labour Officer of the Manzini Region is included in the aforesaid meaningful consultations between applicant and respondent.

2.6. That the staff lay-off is set aside if it is found by the Honourable Court not to be inconformity with the relevant act and or regulations.

2.7. That the prayers 1, 2, 2.1, 2.2 and 2.3 above operate with immediate and interim effect pending the finalization of this application.

3. Costs be awarded against the respondents.

4. Further and/ or alternative relief."

[2] The application is opposed by the respondent. In its answering affidavit the respondent raised two points of law namely, that the applicant has no *locus standi* to bring these proceedings as it has no real and substantial interest in the relief sought nor in the outcome of the proceedings. Secondly, that the respondent has failed to

comply with the rules of this court pertaining to instituting an urgent application as envisaged by Rule 15.

[3] On behalf of the respondent it was argued that;

3.1. The applicant has failed to set forth explicitly why the provisions of Part VIII of the Industrial Relations Act should be waived.

3.2. The applicant has failed to set forth explicitly why it thinks it cannot be afforded substantial relief in a hearing in due course.

3.3. The applicant has no *locus standi in judicio* as it has no substantial interest in the matter or in the results.

3.4. The people who are affected by the lay-off are the employees and not the applicant. The employees are therefore the ones that have a direct interest.

3.5. The right sought to be protected is not contained in a collective agreement and the individual employees must therefore enforce it in their personal capacities.

[4] On behalf of the applicant it was argued that;

4.1. The matter is urgent because the respondent intends to lay off some members of the applicant without them being given the requisite notice.

4.2. There is a matter pending before the court involving the same parties and the question of *locus standi* was not raised.

4.3. The applicant does have a financial interest as its members pay monthly subscriptions and if they are laid-off the coffers of the applicant will dwindle.

4.4. The applicant could not refer the matter to CMAC because that process is slow as it takes CMAC seven days to screen the dispute before it can attend to it.

4.5. The applicant has *locus standi in judicio* as it is the recognized body representing the interest of the workers at the respondent's place.

[5] The court will deal with the question of *locus standi in judicio* as this will have the effect of addressing the application as a whole. The applicant's representative was adamant that the applicant does have *locus standi in judicio* as it is the lawfully recognized trade union at the respondent's workplace. The fact that the applicant is a recognized trade union that has the right to represent its members' interest at the workplace does not give it a blanket mandate to represent the workers in every forum. Whether the applicant has *locus standi in judicio* is determined by whether it has a direct or substantial interest in the subject matter of the application. The applicant may have an indirect financial interest in the sense that it stands to lose the monthly subscriptions. That, however, is not enough to grant it *locus standi.*

(See Swaziland Manufacturing and Allied Workers Union and 99 Others v. Natex (Swazialnd) (Pty) Ltd Case No. 76/97 (I.C).

[6] The subject matter of this application is the intended lay-off process at the respondent's workplace. The contention by the applicant is that there was no sufficient or meaningful consultation between itself and the respondent as envisaged by **Section 19(1) of the Regulation of Wages (Manufacturing and Processing Industry) Order of 2008.** Secondly, that the employees were not given fourteen days' notice before the lay-off as provided for by **Section 19 (3)(a) of the Order.**

[7] *Prima facie,* if there was no meeting between the applicant and the respondent, and if the employees were not given the stipulated notice, the intended lay-off process would be irregular. That however does not give the applicant *locus standi in judicio.*

It is the employees that will be directly affected if they are laid off contrary to the provisions of the order and not the applicant. It is the employees that must enforce their right not be unlawfully laid-off before the court. It was not argued that it would be practically impossible for the workers to institute the legal proceedings on their own.

[8] If for example an employer retrenches five or more workers without first consulting the workers' organization if it exists at the workplace contrary to the provisions of Section 40(2) of the Employment Act, it does not follow that the workers' organization will have *locus standi in judicio* to institute proceedings for unfair dismissal on behalf of the retrenched employees. That the workers' organization was not consulted is a ground for the employees to rely upon that they were unfairly dismissed. Similarly in this case, if there was no meeting between the applicant union and the respondent as envisaged by Section 19(1) of the Order, and if the employees were not given the fourteen days' notice in terms of Section 19(3)(a), it is a good ground upon which the employees can challenge the lay-off procedure as being unlawful. It does not give the applicant union *locus standi in judicio.*

[8] Taking into account all the above observations, the first point in *limine* ought to be upheld. There will be no need for the court to deal with the second point of law raised. The court will accordingly make the following order;

1. **The point of law raised that the applicant has no *locus standi in judicio* is upheld.**
2. **The application is dismissed.**
3. **There is no order as to costs.**

The members agree.

NKOSINATHI NKONYANE

JUDGE - INDUSTRIAL COURT