IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE No: 110/08

In the matter between:

COMMERCIAL AND ALLIED WORKERS UNION OF SWAZILAND	1st Applicant
MINAH LOMASWAZI NTSHALINTSHALI AND NINE OTHERS	2nd Applicants

And

OK. BAZAARS (SWAZILAND) PTY LIMITED t/a SHOPRITE	1st Respondent
SWAZILAND COMMERCIAL AND ALLIED WORKERS UNION (SCAWU)	2nd Respondent

CORAM:

S. NSIBANDE: ACTING JUDGE
P. THWALA: MEMBER
A. NKAMBULE: MEMBER

FOR APPLICANTS: B.S DLAMINI

FOR 1st RESPONDENT: J . HLOPHE

FOR 2nd RESPONDENT: R. NDLANGAMANDLA

JUDGEMENT - 28/7/2008

1. The 1 Applicant is a workers' organisation that was recently recognised as an employee representative within the 1st Respondent's enterprise. Such recognition came about through an arbitration award granted in favour of the 1st Applicant.

2. The 2nd Applicants are all employees of the 1st Respondent and are said to be members of the 1st Applicant.

3. The 2 Respondent is also a workers' organisation recognised by the 1st Respondent as an employee representative within its enterprise. The 2nd Respondent has been a recognised representative for a number of years.

4. The Applicants have brought an application by notice of motion in terms of Rule 14 of the **Industrial Court Rules 2007** seeking an order:

> *"(a) That an order be and is here by issued directing the 1st Respondent to forthwith stop deducting from 2nd Applicants' salaries subscriptions in favour of the union known as Swaziland Commercial and Allied Workers Union, the 2nd Respondent herein;*
>
> *(b) That an order be and is hereby issued directing 1st to refund Applicants all monies wrongfully and unlawfully deducted from their salaries upon resignation as members of the 2nd Respondent;*
>
> *(c) that an order be and is hereby issued directing the 1st Respondent to forthwith derecognise the 2nd Respondent in accordance with the provisions of (sic) the law of operating within the Kingdom of Swaziland;*
>
> *(d) That an order be and is hereby issued directing the 1st Respondent to pay costs of this application;*
>
> *(e) further and or alternative relief."*

5. The application was opposed by both Respondents who filed their affidavits in opposition thereto.

6. The Applicants' case is two fold:

6.1. Firstly, the 2nd Applicants complain that despite having resigned from the 2nd Respondent and having joined the 1st Applicant, the 1st Respondent has continued to deduct subscriptions from their wages in favour of the 2nd Respondent; the result being that the 1st Respondent is now making deductions of fees from the 2nd Applicants' wages in respect of the two

organisations (1st Applicant and 2nd Respondent). The deductions from the 2nd Applicants' wages to two organisations is said to be in contravention of **section 43 (6)** of the **Industrial Relations Act 2000 (as amended).**

6.2. Secondly, that since the 1st Applicant was recognised by virtue of the arbitration award of 19th October 2007 as the sole employee representative, the 2nd Respondent's membership has declined to the extent that it (2nd Respondent) no longer enjoys any meaningful membership among the employees at the 1st Respondent's enterprise. As a consequence thereof, and in terms of the law, the 1st Respondent is obliged to "de-recognise" the 2nd Respondent.

7. Section 43(6) of the Act reads as follows:

> ***"An employer shall not be required at any time to make deductions from the wages of any employee with respect to the fees to more than one organisation."***

8. The 1st Respondent admitted that deductions were being made in respect of fees for the two organisations from the wages of the 2nd Applicants. In an attempt to explain this position the 1st Respondent explained that it had been making deductions from the 2nd Applicants' wages in favour of the 2nd Respondent for a long time prior to the recognition of the 1st Applicant. Further that the 2nd Applicants had not given written notice to stop the deduction of fees from their wages in favour of the 2nd Respondent as envisaged by the **Industrial Relations Act 2000(as amended).**

9. In view of the 2nd Applicants' omission to revoke 1st Respondent's authority to deduct, the court was urged not to grant the order sought by the Applicants but to grant such order as it deems fit in the circumstances as envisaged by section 43(10) of the **Industrial Relations Act 2000 (as amended).**

10. Section 43 (10) reads thus:

> ***"Upon application by an affected party, the Court may make such order as it deems necessary to ensure compliance with this section."***

11.The 2nd Respondent, while aligning itself with the arguments of the 1st Respondent, complained about the manner in which the 1st

Applicant was recognised and about its exclusion from the arbitration process despite being an interested party.

12. Mr Ndlangamandla for the 2 Respondent, argued that in light of the 2nd Applicants' admitted failure to comply with section 43(7) of the **Industrial Relations Act,** it is the deductions being made in favour of the 1st Applicant that should be stopped until the section is complied with. This was more so since some of the persons listed as the 2nd Applicants had not resigned from the 2nd Respondent and denied being members of the 1st Applicant.

13. Regarding the application for the de-recognition of the 2nd Respondent, Mr Ndlangamandla submitted that the **Industrial Relations Act** sets out circumstances under which organisations are "de-recognised". He submitted that 2nd Respondent could only be "de-recognised" once those circumstances were met.

14. It is not for this Court to pronounce on the arbitration award and the process leading thereto. An arbitration award was attached to the Applicants' papers and until such time that that award is set aside, this Court will accept the award as being proper. It is for the 2nd Respondent to attack the validity of the award at the appropriate forum should it wish to do so.

15. **THE DOUBLE DEDUCTION**

16. Section 43 of the **Industrial Relations Act** deals with deduction of fees due to organisations and sets out the procedure in terms of which an employer is requested and authorised to deduct fees from the wages of members of an organisation. It further sets out the manner in which the employer's authority to deduct fees is revoked. To enable an employer to deduct from his wages, an employee delivers written authorisation to an organisation of which he is a member, for the periodic deduction from his wages of fees duly payable by him to the organisation. On receipt of the authorisation the organisation then requests the employer, in writing, to make the authorised deduction and remit it to the organisation.

17. In terms of **the Act,** the deductions so authorised will continue until such time that the employee revokes the employer's authority to deduct from his wages.

(See section 43(1) - (3))

18. It is common cause that prior to the recognition of the 1st Applicant, the 1st Respondent was deducting fees from the wages of the 2nd Applicants in favour of the 2nd Respondent. Such deductions from the wages of 2nd Applicants and the remission of same to the 2nd Respondent could only have taken place with the authority of the 2nd Applicants. The Court can only conclude that these deductions were authorised by the 2nd Applicants and therefore lawful.

19. What then was the 1st Respondent to do when requested to make deductions from the 2nd Applicants wages in respect of fees to be remitted to the 1st Applicant?

20. According to the Applicants, the 1st Respondent ought to have stopped deducting fees in favour of the 2nd Respondent and started deducting fees in its favour from the wages of the 2nd Applicants. The Court was told this should have been so because section 43 (6) of the **Industrial Relations Act** prohibits the deduction of dues from an employee's wages in respect of more than one organisation.

21. This Court is unable to agree with the Applicants regard being had to section 43 (7) of **the Act.** This section sets out the procedure to be followed where an employee no longer wishes for the deductions of fees to be made from his wages. It reads as follows:

> ***"An employee may revoke that employee's authorisation under this section by giving*** written notice to ***the organisation and on the employer concerned and on receipt of such notice the employer shall make the deduction at the end ofihe month in which such notice is received but thereafter cease to make any deduction."***

22. This subsection places an obligation on an employee to revoke **(by written notice)** the employer's authority to deduct from that employee's wages. In this matter, the 2nd Applicants conceded that no written notice revoking the 1st Respondent's authority to deduct fees from their wages was given to the 1st Respondent.

23. In the absence of such revocation of authority by the 2nd Applicants the 1st

Respondent was entitled to continue deducting fees from their wages in favour of the 2nd Respondent.

24. Further and in view of section 43(6) of **the Act** the 1st Respondent ought to have refused to deduct fees from the 2nd Applicants' wages for remittance to the 1st Applicant as this meant that fees would be deducted in respect of two organisations from one employee's wages, in contravention of the Act. would be deducted in respect of two organisations from one employee's wages, in contravention of the Act.

25. The Court finds that in the absence of lawful revocation of the 1st Respondent's authority to deduct fees in favour of the 2nd Respondent from the wages of the 2nd Applicants, it is the deduction of fees from the wages of the 2nd Applicants in favour of 1st Applicant that is in contravention of section 43(6). These deductions, in favour of the 1st Applicant are therefore unlawful.

26. **DE - RECOGNITION**

27. The Applicants also pray that the 1st Respondent be ordered to "de-recognise" the 2nd Respondent on the basis of the arbitration award recognising it as the sole employee representative and also on the basis that the 2nd Respondents membership has declined to the extent that it no longer enjoys any meaningful representation of employees at the 1st Respondent's enterprise.

28. The 2nd Respondents denied these assertions while 1st Respondent stated that it would abide by what ever order this Court made regarding the de - recognition application.

29. By de-recognition, the Court understands the Applicants to mean that the 2nd Respondent's recognition by the 1st Respondent as an employee *representative* should be withdrawn.

30. The withdrawal of recognition of a recognised organisation is governed by section 42(11) of the Industrial Relations Act 2000 (as amended). The section reads thus:

> ***"An employer may make an application to the Industrial Court for the withdrawal of recognition if-(a)The organisation's representativeness falls below the***

representativeness contemplated in subsection (5)(a) for a continuous period of more than three months; or
(b)The organisation has materially breached its obligations under a recognition agreement or an award of recognition under subsection (9)."

31. The representativeness contemplated by subsection (5) (a) is fifty percent (50%) of the employees in an undertaking.

32. It is therefore only the employer who can apply to the **Industrial Court** for the withdrawal of the recognition granted to an organisation upon the decline of that organisation's membership to less than fifty percent for a continuous period of more than three months.

33. The Applicants make a bare allegation of 2nd Respondent's reduced membership without supporting same or even alleging that 2nd Respondent's membership has been below fifty percent for a continuous period of more than three months.

34. The conditions set for withdrawal of recognition by the Act have not been met nor has the party empowered to bring an application for withdrawal of recognition (the employer) done so. For this reason the Court is unable to grant on order for the de-recognition of the 2nd Respondent.

35. It is also worth mentioning that the arbitration award does not state that the 1st Applicant is recognised as the **sole** employee representative at the 1st Respondent's enterprise. It orders only that the 1st Applicant be recognised as an employee representative at the 1st Respondent's enterprise.

36. For the aforegoing reasons, the application is therefore dismissed.

37. The last issue is that of costs. Costs would normally follow the course. However, the 1st Respondent was not without fault in this matter and as a matter of fact, contravened section 43 (6) of the **Industrial Relations Act** by making deductions of fees to the new union from the wages of employees from whom it was already deducting fees due to the 2nd Respondent. For this reason each party will pay its own costs save for the 2nd Respondent whose costs shall be paid by the 1st Respondent and both Applicants on the ordinary scale, in equal share.

37. The members agree.

S. NSIBANDE
ACTING JUDGE