

IN THE INDUSTRIAL COURT OF SWAZILAND

**HELD AT
MBABANE**

**CASE
NO.75/09**

In the matter between:

**SINDIE MASEKO
NOMSA NSIBANDE
NOZIPHO
MNGOMETULU
BONSILE MASEKO
GRACE MASEKO
738 LAID-OFF
EMPLOYEES**

And
**1ST APPLICANT
2ND APPLICANT
3RD APPLICANT
4TH APPLICANT
5TH APPLICANT
FURTHER
APPLICANTS**

**CARAPPAREL SWAZILAND (PTY)
LTD**

**RESPONDEN
T**

CORAM:

**NKOSINATHI
NKONYANE DAN
MANGO GILBERT
NDZINISA**

**JUDGE
MEMB
ER
MEMB
ER**

**FOR APPLICANT
FOR RESPONDENT**

**SHADRACK
MASUKU DAVID
MSIBI**

**RULING ON
POINTS OF
LAW
19.03.09**

[1] The applicants instituted the present proceedings under a certificate of urgency for an order;

Dispensing with the usual forms and procedures and time limits relating to the institution of proceedings and allowing this matter to be heard as a matter of urgency.

Condoning any non compliance with rules of the court.

That 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 prayers 1, 2, 3, 4, and 5 herein below should not be confirmed and made a final order of court.

4. *That respondent is directed to recall all applicants and further applicants currently placed on lay-off are called back to work to resume their work/obligations as enshrined in their contracts of employment.*
5. *Calling upon respondent to pay all applicants and Further applicants their full remuneration as though they were at work all the time they were placed on a lay-off.*
6. *That the said payment of remunerations are paid before the end of business on the 5th March 2009.*
7. *Calling upon respondent to stop forthwith (through lay-offs) harassing, victimizing and intimidating applicants and Further applicants on the basis of them having formed or joined a Trade Union Organization.*
8. *Calling upon respondent to follow the right and legal processes if in need of effecting lawful lay-offs.*
 9. *Calling upon respondent to follow the right and legal processes if in need of effecting lawful lay-offs.*
 10. *Declaring the lay-offs as null and void and of no force and effect.*
 11. *Calling upon respondent to allow CM AC*

(Commission) to conduct the head count secret ballot by the 5th March 2009 without further frustrations of lay-offs.

12. *That prayers 3, 3.1, 3.2, 3.3, 3.4, 3.5 and 3.7 operate as a rule nisi pending the finalization of this application.*

13. *Ordering the respondent to pay costs of this application.*

14. *Further and/or alternative relief."*

[2] The respondent filed an answering affidavit in opposition thereof and also raised four points of law namely; that there is no urgency in this matter as the applicants first knew about the lay-offs complained of on 9th February 2009 but brought the matter to court on 26th February 2009. Secondly, that the applicants have no *locus standi* to institute these proceedings. Thirdly, that the application is fatally defective as it does not comply with Rule 15 (1) and Rule 14 (4) (b) of the Industrial Court Rules of 2007. Lastly, that the applicants have failed to show that good cause exists to warrant the court to depart from the general rules regarding the institution of legal proceedings in this court.

[3] It does not appear *ex facie the* application that the 1st to 5th applicants are acting in their representative capacities yet the deponent to the founding affidavit says that they are members of an interim committee at the respondent's workplace. The 1st to 5th applicants therefore should have indicated on the face of the application that they were instituting these proceedings in their representative capacities

[4] Rule 14 (4) (b) provides that a notice of application shall contain the case number assigned to the matter by the Registrar. Mr. Msibi argued that they were served with an application that did not have a case number contrary to the provisions of this Rule.

Rule 15 (1) states that a party that applies for urgent relief shall file an application that so far as possible complies with the requirement of Rule 14. The applicants' representative failed to explain to the court why it was not possible for the applicants to get the case number from the Registrar.

[5] Urgent applications represent an exception to the requirement that any matter brought to court must comply with the Rules of the court and also Part V111 of the Industrial Relations Act (as amended). The onus is therefore on the applicant to establish that good cause exists to warrant the court to ignore the Rules and the provisions of Part V111 of the Act. In paragraph 31 of the founding affidavit the deponent stated that the application is urgent because the respondent is engaged in unlawful lay-off of the applicants and that it is cumbersome to follow Part V111 of the Act.

[6] The court has pointed out in numerous previous judgements that inconvenience is not a ground for urgency. All other applicants who have their applications pending before the court are no doubt suffering an inconvenience. Even if the respondent's conduct was unlawful, the applicants are still required to set forth explicitly the reasons why they cannot be afforded substantial relief at a hearing in due course. In terms of Section 80 of the Act, "upon receipt of a dispute reported in terms of Section 76, the Commission shall appoint a commissioner within (4) days who shall attempt to resolve the dispute through conciliation." It is not clear to the court why the applicants did not take advantage of this provision of the Act which clearly curtails the process of dispute resolution before the Commission.

[7] Taking into account all the above observations, the court will uphold the points of law raised and dismiss the application. No order for

costs is made.

The members agree.