

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 178/09

In the matter between:

USUTHU POULTRY FARM (PTY) LTD

Applicant

and

SWAZILAND MANUFACTURING AND
ALLIED WORKERS UNION

Respondent

CORAM:

S. NSIBANDE JOSIAH YENDE
NICHOLAS MANANA

PRESIDENT
MEMBER
MEMBER

MR. NKOMONDZE
MR. FAKUDZE

FOR APPLICANT FOR
RESPONDENT

JUDGEMENT - 14 JULY 2009

1. The Respondent is a trade union organization recognized by the Applicant in terms of the Industrial Relations Act 2000. Members of the Respondent employed by the Applicant commenced on a strike action on 15th April 2009 following a dispute between the parties that remained unresolved after conciliation. It is common cause that the strike action is legal.
2. The Respondent's members started shouting slogans, dancing and singing at the top of their voices. Applicant alleges they were singing and running around the chicken sheds where the production of eggs occurs. According to Applicant, the behaviour of the Respondent's members has a

detrimental effect on the production of eggs. It is for this reason that the Applicant has approached the court for an order in the following terms:

"1. Dispensing with the procedure prescribed by the Rules of Court in relation to manner of issue, service and time limits in respect of applications brought before this court and hearing this matter as one of urgency.

5. *Condoning the Applicant for non-compliance with the said Rules of Court;*

6. *That a rule nisi be hereby issued with immediate interim effect, to be returnable on a date to be determined by this honourable Court, calling upon the Respondent to show cause why an order in the following manner must not be made final:*

3.1 that the Respondent's members embarking on strike action at the Applicant's work place should not be restrained or interdicted from picketing within the premises of the Applicant;

7. *that any picketing embarked upon by the said members of the Respondent should not be ordered to be 100m away from the Applicant's premises; and*

8. *that the Respondent be ordered to pay the costs of this application.*

4. *Further and/or alternative relief that this Honourable Court may deem fit."*

3. When the matter first came before court, the Respondent undertook to suspend the strike action pending finalization of this matter. In turn the Applicant did not seek the issuance of the rule nisi applied for. The parties subsequently filed all the affidavits allowed in motion proceedings with the Respondent raising the following points in limine:

9. Urgency: Respondent submitted that it is not true that its members are making noise and disturbing production. In any event, the Respondent submitted, the production of eggs by the chickens is not disturbed by noise but it depends on the treatment given to

the chickens. Further the application is brought in bad faith as the applicant locked out the employees who were picketing in pursuit of their right enshrined in section 107 of the Industrial Relations Act 2000 as amended.

10. Grounds of urgency, the Applicant alleges in its Founding Affidavit that:

"22.1 the harm which the Applicant seeks to curb by the orders sought herein is continuing as the Respondent members are continuing with picketing at the company premises and making noise thus disturbing production in the chickens;

11. *the financial loss occasioned by this harm is far reaching as it accounts for a large portion of the Applicant's sales and will in a short period result in the closure of the Applicant;*

12. *the Applicant has received orders from its customers for the supply of fixed quantities of eggs, and has already contracted with its customers, hence should the production level drop at the rate it is, Applicant stands to be sued by its customers for failure to perform as contracted;*

13. *should this matter go through the procedure of Part V111 of the Act, by the time it is finalized the company would have long closed down business; and*

14. *the parties are still in an employment relationship as such it is prudent that their relationship be preserved."*

4. In terms of section 107 (1) of the Industrial Relations Act it is lawful for workers engaged in a strike to be near or at their place of work for purposes of peaceful picket as the Respondent's members are doing. The Applicant has not made out any case of unlawfulness in support of its assertion that the conduct of the Respondent's members is interfering with its production of eggs. It was open to the Applicant to declare a lock out in terms of section 86

(8) of the industrial Relations Act 2000 as amended as a counter measure to the strike. It chose not to do so.

15. In the matter of **Swaziland Meat Industries v Swaziland Manufacturing and Allied Workers Union (SMAWU) & Others IC Case No. 208/04**, the court stated that *"The pressures that result from the power play by the parties locked in a dispute as in the workers being locked out and the implementation of no work no pay rule and on the other hand the employer experiencing loss of production operate to curtail the period of impasse. It would be inequitable for the court to arm twist one party in the circumstances unless there is clear evidence of illegality by either party to the dispute."*
16. We align ourselves with the decision in the **Swaziland Meat Industries v SMAWU & Others** (supra) and see no reason to arm twist the Respondent in this matter there being no clear evidence of illegality on its part. The Applicant made out no case of violence or illegality in this matter. We are of the view that financial loss resulting from loss of production that is occasioned by strike action is a consequence of such strike action, and by itself does not provide a sufficient ground for a matter to be heard as one of urgency. In the circumstances of this case, we find that the Applicant has not established sufficient reason to dispense with the usual procedures and time limits and for hearing this matter as one of urgency. In the exercise of our discretion, the point regarding urgency will be upheld.
17. In the circumstances, the application is dismissed. There is no order as to costs.

The members agree. **S. NSIBANDE**

PRESIDENT OF THE INDUSTRIAL COURT