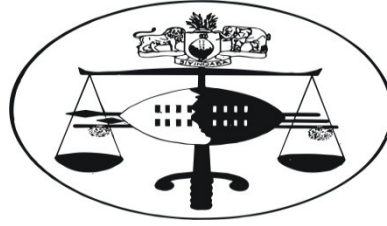


**IN THE INDUSTRIAL COURT**



**OF ESWATINI**

**CASE NO. 208/19**

In the matter between:-

**RFG ESWATINI**

Applicant

**AND**

**SWAZILAND AGRICULTURAL & PLANTATIONS  
WORKERS UNION**

1<sup>st</sup> Respondent

**FURTHER RESPONDENTS [UNIONISABLE  
EMPLOYEES]**

2<sup>nd</sup> Respondent

**THE NATIONAL COMMISSIONER OF POLICE**

3<sup>rd</sup> Respondent

**Neutral citation:** *RFG ESwatini vs Swaziland Agricultural & Plantations  
Workers Union & Others 208/2019 [2019] SZIC 65 (24  
July, 2019)*

**Coram:** N.NKONYANE, J  
(Sitting with G. Ndzinisa and S. Mvubu Nominated  
Members of the Court)

Heard submissions: 18/07/19

Judgement delivered: 24/07/19

## **JUDGEMENT**

1. The Applicant instituted the present application on Notice of Motion under a certificate of urgency on the 11<sup>th</sup> July 2019 for an order in the following terms;

“1. 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.

2. Condoning Applicant’s non-compliance with the rules of Court;

3. Granting a rule nisi, to be made returnable on a date to be determined by the above Honourable Court, calling upon the Respondent to show cause why an order on the following terms should not be made final;

3.1 Interdicting the member of the 1<sup>st</sup> Respondent who are involved in the lawful strike from picketing inside the Applicant’s premises.

- 3.2 Interdicting the members of the 1<sup>st</sup> Respondent, who are engaged in the lawful strike action from intimidating and/or threatening violence to the Applicant's employees who are not engaging in the strike action.
  - 3.3 Interdicting the members of the 1<sup>st</sup> Respondent who are engaging in the lawful strike action from blocking trucks moving in and out of the Applicant's premises and also from blocking the Mahlanya/Luyengo high way.
  - 3.4 Directing the members of the 1<sup>st</sup> Respondent who are part of the strike action to adhere to the agreed **50m** radius.
  - 3.5 Directing the members of the Swaziland Royal Police to use minimal force to remove members of the 1<sup>st</sup> Respondent from the areas not designated for the strike action in the event there is non-compliance with **prayer 3.1 and 3.3.**
4. That prayers 3.1, 3.2, 3.3, 3.4 and 3.5 operate with immediate and interim effect pending finalization of this application;

5. Granting costs of this Application against the 1<sup>st</sup> Respondent.
  6. Any further and/or any alternative relief as to the above Honourable Court may seem appropriate”.
- 
2. The Applicant’s application was opposed by the 1<sup>st</sup> Respondent which filed an answering affidavit dated 12<sup>th</sup> July 2019. Thereafter the Applicant filed its replying affidavit thereto dated 16<sup>th</sup> July 2019.
  3. When the matter appeared in Court on the 11<sup>th</sup> July 2019, the Court issued an interim order in terms of prayers 3.2, 3.3, 3.4 and 3.5. Prayer 3.4 was issued and made to be subject to further negotiations between the parties on the suitable distance at which the picketing by the 1<sup>st</sup> Respondent’s members should be at.
  4. The rule nisi was made returnable on the 17<sup>th</sup> July 2019. On the return day it transpired that the parties were unable to reach an agreement on the suitable distance within which the employees could carry out their picketing. The Applicant’s attorney applied that an inspection in loco be conducted. The Court however not accede to that request as the strike had already commenced and there were reports of violence orchestrated by the striking employees in the local newspaper and it was felt that it would

not be safe for the Court officials to go to the scene of the strike action. The matter was therefore postponed until the 18<sup>th</sup> July 2019 to allow the parties to take photographs of the area where the industrial action is taking place.

5. The Applicant's attorney also raised a point of law that the deponent of the answering affidavit, Mancoba Dlamini, does not have authority to act for and/ or on behalf of the 1<sup>st</sup> Respondent.
6. There are therefore two issues for determination by the Court, that is, the authority of Mancoba Dlamini and; the suitable picketing area for the striking employees.

**7. Lack of Authority by Mancoba Dlamini:**

It was argued on behalf of the Applicant that Mancoba Dlamini has no authority to act on behalf of the 1<sup>st</sup> Respondent because he was suspended by the 1<sup>st</sup> Respondent. It was argued therefore that the strike notice issued by the 1<sup>st</sup> Respondent dated 08<sup>th</sup> July 2019 is of no force and effect. For its argument the Applicant relied on a ruling of a Conciliation, Mediation and Arbitration Commission (CMAC) Commissioner dated 28<sup>th</sup> June 2019 annexed to the Applicant's replying affidavit. The CMAC Commissioner made this ruling in the dispute between Swaziland Agricultural and

Plantation Workers Union V Eagle's Nest (PTY) LTD, Dispute No. SWMZ 24/19.

8. It was argued on behalf of the Applicant that the Applicant is not challenging the legitimacy of the decision to strike but only the notice which was issued by Mancoba Dlamini. The Court was requested to declare the strike action unlawful for lack of proper notice to strike.
  
9. The CMAC Commissioner in her ruling relied on an affidavit that was filed by a certain Queeneth Dlamini to come to the conclusion that Mancoba Dlamini was suspended by the 1<sup>st</sup> Respondent on the 05<sup>th</sup> November 2017. The duration of the suspension however is not known. The letter of suspension is not before the Court. The said Queeneth Dlamini or the President of the 1<sup>st</sup> Respondent did not file any affidavit before the Court stating that Mancoba Dlamini has no authority. The Court is unable, on the papers before it, to come to the conclusion that the Applicant was able to prove on a balance of probabilities that Mancoba Dlamini has no authority. The Court finds it highly unlikely that a reputable trade union like the 1<sup>st</sup> Respondent can just stand by and allow somebody who has no authority to use its letter heads, write correspondence in its name and call a strike action in its name and not take any steps against that person if that person has no authority to do that.

**10. Suitable Picketing Area:-**

It is the first time that this Court is called upon to make a decision on the suitable area or areas where the striking workers should picket. The usual practice is that after the notice to strike is issued, the parties meet to discuss and agree on the rules or logistics of the strike action. The Applicant stated in its founding affidavit that the parties agreed that the striking workers should be fifty (50) meters away from the administration block, and that Princess Pholile Hall was identified as the picketing area. The 1<sup>st</sup> Respondent denied that there was an agreement that the employees should picket fifty (50) metres away from the administration block.

11. The Applicant relied on the minutes of the meeting held by the parties on the 09<sup>th</sup> July 2019 for its assertion that there was an agreement. The minutes are annexed to the replying affidavit and marked “SFC5”. This document is not dated and is not signed by the parties. There is nowhere in this document showing that the parties agreed to the fifty metres distance for picketing by the employees.

12. When the Court issued the interim order it also directed the parties to meet and agree on the picketing area. On the return day the parties told the Court that they met but they failed to come to an agreement. During

the second meeting the 1<sup>st</sup> Respondent proposed a distance of five (5) meters away from the working area. The proposal of five metres was clearly unreasonable in the circumstances of this case. The 1<sup>st</sup> Respondent also wants its employees to picket inside the factory or working area. Due to the nature of the Applicant's operations, the Court cannot allow the striking workers to picket inside the factory. The right to strike is correlated to the right not to strike. The employees who are not part of the strike have the right to carry on with their normal duties unhindered. The Court is therefore called upon to strike a very delicate balance between the interests of employees that are engaged in lawful strike action, the employees that are not participating in the strike action and interest of the employer to keep the premises free from harm during the strike action.

13. From the pictures presented to the Court by both parties it can be seen that there is a boundary around the factory made of palisade fence. There are two main entrances, being Gate 1 and Gate 2. Gate 1 is on the front leading to the reception. Gate 2 is at the back and it is called the farm entrance. Whilst the industrial action is going on, visitors and should be able to access the factory through Gate 1. Farm machinery and delivery motor vehicles should be able to access the factory through Gate 2.

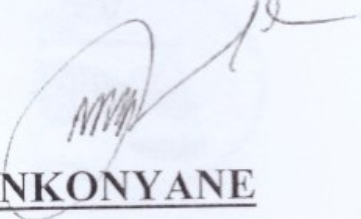


14. Ordinarily, picketing is carried out with the view to induce compliance with a demand concerned with the employer/employee relationship. The striking workers therefore should not be so far away from the workplace such that the picketing is rendered meaningless and ineffective. The striking workers should be able to communicate their message to management. On the other hand, the Court will not be naïve and ignore lessons learnt from past experiences during strike actions. The view of the Court therefore is that it would be unfair on the part of the striking employees to be confined to Princess Pholile Hall and do the picketing there out of sight of the administration block. The striking employees should be able to be within view of the administration block so that their message is communicated to management. The striking employees should have the liberty to move away from Princess Pholile Hall. Should the striking employees decide to move away from Princess Pholile Hall, they should remain outside the palisade fence and not block the gates leading into or out of the factory.
15. Taking into account the pictorial presentations by the parties, the Court will come to the conclusion that the striking workers cannot be allowed to picket inside the factory and they should not block any entrance to or exit from the factory for motor vehicles, non-striking workers, visitors and management.

16. Taking into account all the evidence before the Court, the submissions made by the parties, the interests of justice and fairness, the Court will make the following order;

- a. The striking employees are interdicted from picketing inside the factory. They are to remain outside the palisade fence.
- b. The striking employees are interdicted from intimidating and/or threatening violence to the employees that are not engaged in the strike action.
- c. The striking employees are interdicted from blocking trucks or any other motor vehicles moving in or out of the Applicant's premises or any vehicular traffic moving along the Mahlanya/Luyengo public road.
- d. The members of Royal Eswatini Police Service to use all lawful means to maintain peace and order during the strike action.
- e. Each party to pay its own costs.

21. The members agree.



N.NKONYANE  
JUDGE OF THE INDUSTRIAL COURT OF ESWATINI

For Applicants: Mr. B. Gamedze  
(Attorney at Musa M. Sibandze Attorneys)

For Respondent: Mr. K. Q. Magagula  
(Attorney at Sithole & Magagula Attorneys)