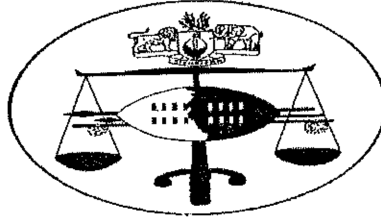

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE Case No 109/2022(b)

In the matter between:

SWAZILAND AGRICULTURAL AND PLANTATION WORKERS UNION Applicant

And

SWAZILAND RANCHES LTD t/a TABANKULU ESTATE Respondent

Neutral citation: Swaziland Agricultural and Plantation Workers Union v Swaziland Ranches t/a Tabankulu Estates [109/22) [2022] SZIC 74 (14 June 2022)

Coram: **NGCAMPHALALA AJ**
(Sitting with Mr.M.P. Dlamini and Mr. E.L.B. Dlamini, Nominated Members of the Court)

DATE HEARD: 17th May, 2022

DATE DELIVERED: 14th June, 2022

SUMMARY: Urgent application-interdicting Respondent from unilaterally changing terms and conditions of employment-Respondent raises points in limine-lack of urgency- dispute of interest-employer prerogative.

Held – Application prematurely before Court- application dismissed-each party to bear its own costs.

JUDGMENT

[1] The Applicant is the Swaziland Agricultural and Plantation Workers Union (SAPWU), a union duly registered and recognized by the Respondent as the sole representative of all employees of the Respondent within the agreed bargaining unit.

[2] The Respondent is Swaziland Ranches Limited, trading as Tabankulu/ Umbuluzi Estates, a company duly incorporated in accordance with the company laws of the Kingdom of Eswatini, having its principal place of business at Tabankhulu Estates under the Lubombo District.

BRIEF BACKGROUND

[3] The present proceedings seek to interdict and/or restrain the Respondent from scraping the afternoon teak break from Applicant's members. Further to interdict and/or restrain the Respondent from removing tractors carrying cane seedlings for cane planters. The Applicant further seeks to direct that the Respondents pay out any renumeration/allowance to its members for the period the tractor(s) carrying cane for cane planters had been removed and/or unavailable.

[4] The Applicant has now approached the Court under a Certificate of Urgency, seeking an order in the following terms:

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

4.2 Condoning any non-compliance with the Rules of Court relating to notice and service of court process;

4.3 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.

4.4 That pending finalization of this application, the Respondent is interdicted and/or restrained from scraping the afternoon tea and/or tea break for Applicant's members;

4.5 Interdicting and/or restraining the Respondent from removing tractor(s) carrying cane for cane planters pending finalization of this matter;

4.6 Ordering and/or directing the Respondent to remunerate Applicant's members for the period the tractor(s) carrying cane for cane planters had been removed and /or unavailable;

4.7 Declaring that the Respondent has an obligation to maintain and/or preserve the status quo with respect to the terms and conditions of service for Applicant members deployed to plant cane in Respondent's cane fields in terms- of agreements entered into by the parties;

4.8 Directing and/or ordering the Respondent to engage the Applicant prior to implementing any changes in terms and conditions of service for Applicant's members;

4.9 Alternatively, to prayer 4.6 herein- above, directing the Respondent to pay the carrying-out of sugar-cane allowance to all employees required to carry sugar from the edge of the sugar cane fields for planting in the fields.

4.10 Costs of this application be awarded against the Respondent.

4.11 Further and/or alternative relief as the Court may deem appropriate.

[5] The Applicant's application is opposed by the Respondent and an answering affidavit was duly filed and deposed thereto by Mr. Sipho Nyoni Respondents Employee Relations Manager. The Applicant thereafter filed its replying affidavit. The matter came before Court on the 3rd May, 2022, wherein the parties agreed on timelines for the filing of all pleadings, heads

of argument, and agreed on the 11th May,2022 as the date for arguments. On that date the matter was postponed to the 17th May, 2022. The parties further agreed to deal with the matter holistically dealing with the points in limine and merits. On the 17th May, 2022 the matter was heard and judgement was accordingly reserved.

ANALYSIS OF FACTS AND APPLICABLE LAW

[6] Through the answering affidavit of Mr. Sipho Nyoni the 1st Respondent raised the following points ***in limine***:

(i)Ad Urgency

(ii)Ad Dispute of Interest

(iii)Ad Employers Prerogative

[7] During the initial argument of the matter it became apparent to both parties that the point *in limine* on urgency had become academic. Even though the Respondent had initially intended to argue that the matter was not urgent, by virtue of the parties agreeing to the filing of pleadings, and heads of arguments at a later date, it was apparent that the urgency had become academic, and the Respondent during its submissions, did not pursue this line of argument, hence the Court will not deal with it. The Court will proceed to deal with the two remaining points *in limine*.

[8] The brief history of the matter, is that the Applicant is recognized by Respondent as the sole bargaining agent of its employees, falling within the bargaining unit. On or about the 1st December, 2020 the Respondent came under new management wherein the Public Service Pension Fund (PSPF)

acquired 100% shares of the Respondent from Tongaat Hulett Group. When PSPF took over the parties entered into an agreement wherein the Respondent undertook to preserve the existing terms and conditions of employment of its employees represented by the Applicant. The agreement read;

"MEMORANDUM OF AGREEMENT BETWEEN SAPWU LOCAL BRANCH AND TAMBANKULU ESTATES ON THE SALE OF SHARES BY TONGAAT HULETT TO PUBLIC SERVICE PENSIONS FUND

Tongaat Hulett company has sold its shares in Swaziland Ranches t/a Tambankhulu Estates to the Public Service Pensions Fund (PSPF). On the 1st December 2020, the Public Service Pensions Fund has assumed 100% shares in Swaziland Ranches t/a Tambankulu Estates. The sale of the shares by Tongaat Hulett to Public Service Pensions Fund will have no impact on the present/ existing terms and conditions of employment for SAPWU Bargaining Unit.

Any future changes arising out of business requirements will follow the applicable employment laws and internal procedures. Any alterations to the conditions of employment will not be unilaterally done.

This agreement was signed at Tambankulu on the 2 day of June 2021

Signed by:

___________________	___________________
FOR MANAGEMENT	*FOR UNION*
___________________	___________________
WITNESS	*WITNESS*
___________________	___________________
WITNESS	*WITNESS ."*

[9] It was the Applicant's submission that during the Easter weekend in 2022, the Respondent unilaterally and without consultation withdrew the tractors responsible for carrying sugar cane seedlings from the fields without prior consultation with itself. The Respondent then proceeded to propose that its members carry the sugarcane seedlings from the edges of the fields, at a rate of E23.04 per day, and failed to engage the union on the issue. Whilst aggrieved by the above issues the Respondent proceeded to notify the Applicant that it intended to scrap afternoon tea/or tea break with effect from the 2nd May,2022, and this decision too was taken without prior consultation with the Applicant.

[10] Respondent in rebuttal argued that Applicant's application is misguided and bare in law. It was the Respondent's submission that the Applicant's claim regarding the alleged changes to terms and conditions of employment is a dispute of interest and as such is not enforceable by way of Court interdict. It was the Respondent's submission that the Applicant cannot direct it on how to run its operations regarding the ploughing of sugar cane and the methods or procedures. The Respondent argued that this is an operational issue which is a prerogative of the employer, therefore, the issue in dispute is a dispute of interest. In support of the argument the case of **Swaziland Railways v Public & Private Sector Transport Union [456/14] SZIC 44**, and the case of **Swaziland National Association of Teachers & Others v The Ministry of Public Service and Another (323/2017) [2017] SZIC 137.**

[11] On the removal of the afternoon tea, it was the Respondents submission that despite the memorandum informing the Applicant of its intended removal of the afternoon tea break, the matter is still pending before the consultation forum, and the afternoon tea break is still being enjoyed by Applicant's members. It was its averment however that the Applicants members are not a legal entitlement to tea break, as same was introduced by the employer as a bonus, however it has come to realize that the afternoon tea break disadvantages it and therefore it has taken the necessary steps to put it before the consultation forum informing it of intention to remove it.

[12] In closing its case it was the Respondent's submission that how it runs its operations is its prerogative as an employer. It argued that the Applicant has no right to dictate to it, on how best to run its operational issues. It averred that as an employer it is entitled to run its business and to structure its operations in a manner it deems fit. In support of its case, it cited the case of, **The Workers Union of Swaziland Town Council & Another v Municipal Council of Manzini [2016] SZIC 15** and the case of **Dumisa Zwane v Ezulwini Municipality & Others IC Case 33/2019.** It averred further that the Applicant has failed to adequately make out its case for the prayer it seeks and therefore its application should be dismissed.

[13] It is common cause that a collective agreement exists between the parties. It is further common cause that when PSPF acquired its shares within the Respondent, it was agreed to in terms of the memorandum of agreement between the Applicant and the Respondent dated 2 June, 2021 that any future

changes arising out of business requirements will follow the applicable employment laws and internal procedures, and that any alterations to the conditions of employment will not be unilaterally done.

[14] **Section 57 of the industrial Relations Act, 2000 (as amended)** sets out the importance and effects of registration of a collective agreement, for context the Court will set out the provision in full,

"57 (1) The terms and conditions of a collective agreement registered under section 56 (referred to in this Part as a "registered agreement" shall be binding on the parties.

(2) The terms and conditions of a registered agreement shall, where applicable, be deemed to be terms and conditions of the individual contract of employment in the case of an agreement reached-

(a) in a Joint Negotiation Council, for all employees covered by the agreement in the industry or area in which the Joint Negotiation Council was established;

(b) between a trade union or union, and one or more individual employers, for all employees covered by the agreement who are employed by such employer or employers; and

(c) between a staff association or associations and one or more individual employers, for all employees covered by the agreement who are employed by such employer or employers.

(3) Registration of a collective agreement shall be deemed to constitute usual notice to affected parties of all the provisions of the collective agreement."

[15] The collective agreement therefore establishes the workplace rights of both the employees and the trade union. The Applicant in order to gain access to the injunctive relief in this Court, has relied upon its representational capacity as founded upon 3.1 of the collective agreement entered into between itself and the Respondent which reads:

"The Company and the Union hereby establish this Collective Agreement concerning all terms and conditions of employment, procedures for the settlement of all differences and any matter of mutual interest between the company and union."

From the Collective Agreement it is clear that the Respondent recognizes the union as the sole collective bargaining agent for and on behalf of its employees. Further that the Respondent undertook that it shall not enter into negotiations on conditions of employment with any other individual except the union, or alter the terms and conditions of Applicant's members without prior consultation with it. The laws applicable to guide the parties in enforcing the collective agreement, would then be the labour laws of the country.

[16] The Court will deal firstly with the point *in limine* on the prerogative of the employer. Dealing with this issue of employer's prerogative, Dlamini J in the case of The **Workers Union of Swaziland Town Councils & Various Member v Municipal Council of Manzini I/C Case No. 289/2015(b)** stated:

"As a rule, this Court has always, and consistently so, upheld the employers'' inherent prerogative to regulate their businesses. Under the doctrine of management prerogative, every employer has the inherent right to regulate, according to their discretion and judgment, all aspects of employment relating to employees' work, including hiring, work assignments, working methods, tie, place and manner of work, supervision, transfer of employees, lay-off of employees, discipline and dismissal of employees. The only limitation to the exercise of this exclusive prerogative of the employers are of course those imposed by our labour law and principles of equity and substantial (natural)justice."

[17] As correctly submitted by the Respondent the Courts are reluctant to interfere with the managerial prerogative of employers, in the absence of good cause being clearly shown. It is trite that in the absence of gross unreasonableness with the inference of mala fides, the Court is hesitant to interfere with the employer's exercise of its management discretion. However, it is of note that where good cause can be shown the Court may make an exception.

[18] From the evidence as adduced by the Respondent, it has submitted that even though it has the discretion to implement new working methods, however in the present circumstances it has not unilaterally done so. It was the Respondents submission that it has not removed the cane seedling carrying tractors from its operation as submitted by the Applicant. It was its averment that the use of the tractors to haul the cane seedlings has done been stopped however it is only implementable under "*normal condition*" which it went on to describe as meaning;

"Where the field in which the sugar cane is planted is dry enough for the tractor to drive through without compacting the area where it is driven."

[19] However during heavy rain season, as is the position in the present case wherein heavy rain has been received over the months then the tractors cannot enter the fields to haul the sugar cane seeds. This condition is then referred to as *"abnormal conditions"*. Further, it was the Respondent's submission that management sought to engage the Applicant on the issue and invited the Applicant to a consultative meeting, however the Applicant declined to attend the meeting.

[20] It is apparent from the submission of the parties that both the issue of the provision of tea break and the provision of sugar cane seed hauling tractors have not been removed by the Respondent. The issues are as submitted still at engagement level before the consultative forum which is comprised of both the Applicant and the Respondent. The Court is of the view that the matter is prematurely before it, and the parties have not fully engaged on the issues before the Court and there is a need for such engagement before any pronouncement by the Court.

[21] Therefore, in the circumstances the Court will not fully ventilate the issue of whether the present matter is a dispute of right or dispute of interest, and whether the issues are of an operational nature falling within the ambits of the employer's prerogative. The spirit of the **Industrial Relations Act** provides for the promotion of harmonious industrial relations, promote fairness and equity in labour relations and stimulate a self regulatory system

of industrial and labour relations and self-governance. Taking this into consideration, the matter is prematurely before this Court, as the parties have not fully engaged each other on the issues before Court, and therefore the Application is accordingly dismissed.

[21] This is then is the order of Court.

1) **The application is dismissed.**

2) **Each party is to bear its own costs.**

The Members Agree.

B. NGCAMPHALALA

ACTING JUDGE OF THE INDUSTRIAL COURT OF SWAZILAND

FOR APPLICANT: Mr. A. Fakudze (Alex Fakudze)

FOR RESPONDENT: Mr. R. Dlamini (Magagula Hlophe Attorneys)