

**CONCILIATION, MEDIATION AND ARBITRATION COMMISSION**

**HELD IN MANZINI**                      **MNZ 641/06**

In the matter between:-

**SHCAWU**                                      Applicant

And

**CHICKEN LICKEN/ KHARAFI TRADING**

**(PTY) LTD**                                      Respondent

**RULING**

1. The Applicant reported a dispute to the Conciliation Mediation and Arbitration Commission (CMAC) which dispute was conciliated and a Certificate of Unresolved dispute was issued.
2. The dispute centred on non - recognition of the members of the applicant union in terms of Section 42 of the Industrial Relations (Amendment) Act, 2005.
3. The Respondent has raised certain points in limine i.e. preliminary legal issues for determination which they submit have the effect of disposing of the dispute in its entirety.

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4. On the 3<sup>rd</sup> April 2007 where both parties were present and duly represented, the Respondent indicated that they were to raise the preliminary legal points and it was agreed that these points of law be served on the applicants on the 11<sup>th</sup> April 2007.
5. The Respondent duly served a "Notice of Intention to Raise Preliminary Objections on points of law" to the Applicant on the 11<sup>th</sup> April 2007 being the agreed date.
6. On the 17<sup>th</sup> April 2007 to which the matter had been postponed by consent for arguments on the points in limine, the applicants did not appear before the Commission.
7. The Respondent's representative, Mr. Ndzinisa was present.
8. The Applicant had on the 17<sup>th</sup> April 2007, on the date on which the matter was to be heard, sent a fax to the Commission wherein it was stated that they "requested for postponement to our case to a later date" and that we "thank you in advance for your maximum co-operation".
9. When the arbitration commenced, in their absence, Mr. Ndzinisa for the respondent, indicated that he objected to a postponement of the arbitration and implored the arbitrator to proceed with the arbitration.

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10. I acceded to Mr. Ndzinisa's application and ruled that he proceeds to argue the points in limine raised by himself for the respondents.
11. I venture to state at this point that parties to an arbitration proceeding are duty bound to appear before the Commission and move an application for postponement in the presence of the other party.
12. In this particular dispute, the applicants did not even inform the respondents that they intended to move an application for a postponement, nor did they appear before the arbitrator to move their application and advance the reasons.
13. The respondent raised four points of law as follows:

13.1. That the Report of Dispute was fatally defective in that it was made in terms of Section 76 and 77 of the Industrial Relations Act, 2005 (as amended), which Act is nonexistent.

13.1.1 It was submitted on behalf of the respondent that the Industrial Relations Act 2005 (as amended) was nonexistent in the Kingdom of Swaziland.

13.1.2 It was further submitted that the proper citation of our Industrial Relations Act was the "Industrial Relations (Amendment) Act, 2005" or the "Industrial Relations Act (2000) as amended.

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13.1.3 I find that the respondent is correct in this regard and that the Industrial Relations (Amendment) Act

2005 has not yet been amended, as the pro forma CMAC Form 1 seems to suggest.

13.1.4 However, the defect in the pro forma cannot be visited upon by the applicants who have no control over the design of the forms by the Commission. While the point is well taken, I find that this defect does not prejudice the respondents and that CMAC is well advised to correct the form.

13.2. The respondent has also raised objection to the report of dispute in that it does not state when the issue giving rise to the dispute first arose.

13.2.1 A cursory glance at the report of dispute at paragraph 5.2 was left blank by the applicants.

13.2.2 The respondent submits that Section 76 (2) of the Industrial Relations (Amendment) Act, 2005 provides that a dispute may not be reported to the Commission if more than eighteen (18) months has elapsed since the issue giving rise to the dispute first arose.

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13.2.3 Without this information being submitted to the Commission, the Respondents are seriously left in doubt, so the arguments goes, whether the dispute is within the prescribed statutory period.

13.2.4 I find that there is merit in this argument by the respondent and that the applicant ought to have taken meticulous care in providing this material information to the Commission.

13.3. The third argument raised by the respondent is that the Report of Dispute was made by the applicant before the application for recognition was made.

13.3.1. The respondent submitted that from a cursory glance of the Report of Dispute, it seems that the Report of Dispute was signed at Manzini in August 2005 and received by the Commission on the 18<sup>th</sup> August 2006.

13.3.2. There is however a rubber stamped date by the Commission which reflects the date as the 18<sup>th</sup> August 2006.

13.3.3. It seems to me that this was a mere oversight by the person who filled in the form who ought to have changed the pro forma from 2005 to 2006 using black ink.

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13.3.4. I find that this defect is not material and that this oversight by the Commission should not be visited upon the applicants.

13.4. The fourth in limine point raised by the respondent is that the applicants have cited the wrong party in the Report of Dispute.

13.4.1 The argument by the respondent is that the applicants cited Chicken Licken/ Kharafa Trading (PTY) LTD instead of Kharafa (PTY) LTD.

13.4.2 It was submitted that there are two distinct companies being Kharafa Trading (PTY) LTD (Certificate of Incorporation No. 821/99) and Kharafa (PTY) LTD (Certificate of Incorporation No. 169/1993).

13.4.3 It was further submitted that Kharafa Trading (PTY) LTD deals in the sale of animal feed and had nothing to do with Chicken Licken, which is the trading name of Kharafa (PTY) LTD.

13.4.4 It seems to me that there is merit in this argument and that the applicants have cited the incorrect party. The applicants ought to have cited Kharafa (PTY) LTD trading as Chicken Licken as the respondent.

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14. In the premise, the points in limine with respect to the incorrect citation and the failure to state when the dispute first arose are upheld and the dispute as reported by the applicants dismissed.

DATED AT MANZINI ON THIS THE 23<sup>rd</sup> DAY OF .....APRIL.....2007.

BONGANI MTSHALI ARBITRATOR

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