IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE	CASE NO. 282/99
In the matter between:	
WILFRED A. RUDD & 3 OTHERS	APPLICANT
and	
DELOITTE & TOUCHE (PTY) LTD	RESPONDENT
CORAM:	
NDERI NDUMA:	PRESIDENT
JOSIAH YENDE:	MEMBER
NICHOLAS MANANA:	MEMBER
FOR THE APPLICANT:	MR. M. BANDA
FOR THE RESPONDENT:	MR. P. DUNSEITH

RULING

31/08/2000

The three applicants filed this application against Deloitte and Touche (Pty) Ltd on 18th November 1999.

The Respondent filed its reply on the 3rd April, 2000 wherein it raised various objections in limine listed 1.1 to 2.1.6.

The first objection challenges the jurisdiction of the court to hear this application alleging that no report of dispute to the Commissioner of Labour was made by the Applicant against the respondent. It is alleged that the only report made in terms of Section 41 was against Deloitte and Touche, a firm of chartered accountants practising in partnership at Mbabane.

The Commissioner of labour purported to conciliate between the Applicants and Deloitte and Touche and issued a report a copy of which is attached to the Applicant's application.

The present application has been brought against a limited liability company duly incorporated and registered in Swaziland as respondent.

It was submitted by Mr. Dunseith that in terms of rule 3 (2) of the rules of the Industrial Court 1984 this court has no jurisdiction to entertain a matter where the applicant has not complied with Part V111 of the Industrial Relations Act No. 1 of 1996. It is noteworthy that Part V111 of the Industrial Relations Act, 2000 has largely retained the reporting procedures to the Commissioner of Labour and in addition created a commission of conciliation mediation and arbitration with the objective of enhancing extra curia dispute resolution.

The Applicant filed a replication to the Reply dated 30th May 2000 wherein it conceded that the Applicant had reported a dispute against Deloitte and Touche a firm of chartered accountants to the Labour Commissioner. A report of the conciliation annexed to the Application reflects the parties accordingly.

It is trite, following the decision in Swaziland Industrial Court Appeal No. 2/87 Swaziland Fruit Canners (Pty) Limited and Philip Vilakati and Another that this court has no jurisdiction to entertain a matter brought before it without strict compliance with the provisions of Part V111 of the Industrial Relations Act.

Regarding this issue, Hannah CJ enunciated the following principle on page two of the judgement;

"The role to be played by the Labour Commissioner in terms of the statute is undoubtedly an important one. It is most desirable that industrial disputes be settled if possible by means of conciliation rather than determined in the more formal surrounds of a court and no doubt the existence of a statutory conciliation procedure saves the Industrial Court from hearing many time-consuming cases which are capable of resolution with the assistance of a neutral and expert third party. The importance of the Labour Commissioner's role is such that the duties imposed upon him by Part VIII of the Industrial Relations Act should, in my view, be strictly observed".

This position has not changed with the coming into effect of the Industrial Relations Act, 2000. Part V111 procedures in the Industrial Relations Act, 2000 are peremptory

This being so, the only issue to be determined is whether it is permissible to allow the applicant to amend the application to substitute the respondent with the party against whom a report was made to the Labour Commissioner.

Citing the decision of Parker J (as he then was) in Industrial Court Case No. 84/97 Elmont B. Mamba and Tracar Limited. Mr. Dunseith for the Respondent submitted that such an application to substitute parties is not permissible unless there is consent to do so by the other party.

In that case, the Applicant had cited the respondent as Tracar Limited a company duly registered in accordance with the company laws of Swaziland.

An objection was moved by the respondent to the effect that the applicant was never employed by Tracar Limited but by Swaki Investments Corporation Limited trading as Tracar a division of Swaki Investments Corporation.

While acceding to the objection raised, the honourable judge stated:

"------to remove Tracar Limited and substitute Swaki therefore as the respondent would have the effect of introducing a new party into the proceedings. That also cannot be done unless Swaki has been given due notice of the introduction and has consented thereto".

We entirely concur with the findings of Justice Parker thereof and add that from a juristic point of view, Deloitte and Touche (Pty) Limited has a sperate legal persona from the partnership known as Deloitte and Touche.

The applicants must be employed by either of the two entities but not both. In this application, the applicants aver that they were employed by the firm of accountants known as Deloitte and Touche.

There being no consent from Deloitte and Touche (Pty) Ltd to have the amendment sought effected, the point in limine is upheld.

Concerning the issue of joinder, it would appear from the papers filed of record that the issues for determination in respect of the individual applicants differ in material respects.

In the interest of convenience and justice the three applicants should file separate applications.

I make no order as to costs.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT