IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 221/2000

In the matter between:

SWAZILAND MANUFACTURING AND

ALLIED WORKERS UNION APPLICANT

and

SWAZILAND UNITED BAKERIES (PTY) LTD RESPONDENT

CORAM:

NDERI NDUMA: PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

FOR THE APPLICANT: MR. SICELO DLAMINI

FOR THE RESPONDENT: MR. MUSA SIBANDZE

RULING

05. 09. 2000

The Applicant union moved an urgent application seeking for an order in the following terms:

1. Waiving the usual requirements of the rules of court regarding form, notice and service of the application in view of the urgency of the matter.

2. That a rule nisi do hereby issue calling upon the Respondent to show cause why the following orders should not be made final:

2.1 Restraining the Respondent from implementing the proposed redundancies pending the completion of the consultation exercise agreement before the parties.

2.2. Directing the Respondent to comply with Section 40 of the Employment Act of 1980 (as amended).

2.3 Directing the Respondent to pay to Applicant members to be retrenched their July remunerations.

2.4 Directing the conduct of the Respondent unlawful, illegal and contrary to Section 40 of the Employment Act, 1980.

The Application is grounded on the Affidavit of Ephraem Dlamini the Secretary General of the Applicant

The Applicant implores the court to hear this matter on an urgent basis for the reason contained in the Founding Affidavit as follows:

"1. The matter is urgent by virtue of the fact that the proposed retrenchments/redundancies have already been commenced by the Respondent without any consultations between the parties".

It is common cause that on the 28th June 2000 the Respondent issued a notice in terms of Section 40 of the Employment Act to the Labour Commissioner and copied it to the Applicants wherein the employees the subject of this Application were declared redundant with effect from 28th June, 2000. The list of the targeted employees ninety (90) in number was annexed thereto.

Inspite of protestation by the Applicant union, by the time this application was argued in court, the terminations had been fully effected. Indeed this Application was launched on the 28th July, 2000 inspite of the prior knowledge by the Applicant that the retrenchments were being effected by the Respondent.

What the Applicants seek the court to do effectively is to reinstate the retrenched employees by way of an interdict without following the procedures set out in Part V111 of the Industrial Relations Act 1996 which have been retained with amendments by the Industrial Relations Act 2000.

It is alleged that by implementing the retrenchment in disregard of the Recognition Agreement, and Section 40 of the Employment Act, such unlawfulness has made this matter urgent in that the Applicants's members will suffer irreparable harm by fact of the termination.

In my view, the issues for determination in an application of this nature are inherent in any dispute arising from a dismissal and following the decision in Nationale Bierbrouery (Edms) BRK v John Noem Andre 1991 (1) SA 85 (TPD), urgency could not be founded upon such considerations.

If this were to be so, it would be difficult to think of any matter arising from a termination of employment that would not qualify to be heard on an urgent basis.

We are fortified in this respect by the dictum of Banda P in Phineas Vilakati v J D Group (Pty) Ltd Industrial Court Case No. 41/97 at p2 as follows:

'"We agree with the Respondent that the reasons given to justify treating this matter as urgent do not differ from the normal reasons set out by persons who have brought applications of unfair dismissal for determination by the court. If we were to order that this matter be treated as urgent on the ground now advanced then every case now pending before court would qualify to be treated as urgent".

Many matters before us arise from an alleged breach of Recognition Agreement and violation of the provisions of the Employment Act. With respect, the present matter does not wear different colouration from the plethora of disputes yet to be determined and the parties await patiently for their turn in the roll.

As concerns the issue of the interim relief sought, it is a well established principle of law that an Applicant seeking such relief must satisfy basic preliquisites as was outlined by Pike CJ in Swaziland Dairies (Pty) Ltd v Meyer 1970-1976 SLR 91 at 92 as follows:

"To entitle the Applicant to the exercise by the court of its discretion to grant an interim interdict it is clear from the authority that he must show (a) that the right which is the subject matter of the main action and which he seeks to protect by means of interim relief is clear or, if not clear, is primafacie established, though open to some doubt; (b) that if the right is only primafacie established, there is a well grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and he ultimately succeeds in establishing his right © that the balance of convenience favours the granting of interim relief and (d) that the Applicant has no other satisfactory remedy. See L.F. Boshoff Investments (Pty) Ltd v Cape Town Municipality (2) SA 256 © at p 267.

From the facts before us, a termination for reasons of alleged redundancy has been effected. There is a well established dispute reporting and resolution procedure provided under Part V111 of the Industrial

Relations Act 2000 in disputes of this nature. It cannot be gain said that the Applicants will be afforded substantial redress in due course in terms of the procedure aforesaid. It cannot be said therefore that they are likely to suffer irreparable harm if the interim relief sought is not granted.

On the issue of primafacie right, the alleged breach of Recognition Agreement and Section 40 procedures is disputed by the Respondent. These are issues of fact and law which can best be determined upon hearing evidence of both parties. As there are conflicting facts in the papers filed, the Applicant has not satisfied this test. See the case of Plascon Evans v Van Riebeck Paints 1984 (3) SA 623 at 634 E - E.

The issue is compounded by the admission by the Applicant that the termination has already been effected. What is effectively sought is a status quo order that has the effect of reinstating the employees who have already been retrenched.

In the Industrial Court of Swaziland Case No. 8/99 between Swaziland Manufacturing and Allied Workers Union and Swazi Paper Mills. I relied on the dictum of Reveras I in Fordham v Ok Bazaars (1929) Ltd (1998) 19 ILJ,115 (LC) in finding that it is not competent for this court to issue an interim interdict that has the effect of reinstating an employee that has been retrenched to his previous job.

For the aforesaid reasons, the Application is dismissed with no order as to costs.

NDERI NDUMA

PRESIDENT - INDUSTRIAL COURT