IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 237/2000

In the matter between:

THE ROYAL SWAZILAND SUGAR

CORPORATION LIMITED APPLICANT

And

SWAZILAND AGRICULTURAL AND

PLANTATION WORKERS UNION RESPONDENT

CORAM

KENNETH NKAMBULE: JUDGE

DAN MANGO: MEMBER

GILBERT NDZINISA: MEMBER

MR. BANDA: FOR APPLICANT

MR. N. J. HLOPHE/

MR. B. MVUBU: FOR RESPONDENT

RULING ON POINTS IN LIMINE

13/9/00

In this application which is brought under the certificate of urgency, the applicant prays for inter alia:-

a) Waiving the usual requirement of the rules of this court regarding notice and service of applications in view of the urgency of the matter.

b) Directing and requiring the respondent to forthwith stop the continued breaches to the provisions of the recognition and procedural agreement and the collective agreement entered into between the parties and to suspend, set aside, nullify the termination of the services of 76 cane cutters for alleged intimidatory, obstructive act on the 1st August 2000 in breach of the provisions of the recognition agreement and for the matter

to be resolved at the ongoing year 2000/2001 COLLECTIVE AGREEMENT NEGOTIATIONS or at a properly constituted disciplinary hearing pursuant to Annexure 6 of the disciplinary procedure provided for in the recognition and procedural agreements.

c) Directing and requiring respondent to abide by the provisions of the memorandum of agreement entered into with the applicant and dated 29th June 1995 relating to the standard task for cane cutters as read with clause 15 dealing with hours of work in the agricultural department as read with the english schedule standard task for cane cutters of the collective agreement prevailing between the parties.

d) Further or alternative relief.

There is filed of record a launching affidavit in support of the application. The respondent has filed an answering affidavit in which objections in limine have been raised. On the appointed day of the hearing on 11th September 2000 respondent filed additional points in limine. They are as follows:

3.1 The applicant has brought this application as an urgent application. No grounds whatsoever are laid in the applicant's application as to why the matter is or should be treated as one of urgency. In fact it does not appear nor has it been alleged anywhere in the applicant's application as to why this matter is urgent. The applicant has further failed to comply with the requirements of the rules of this honourable court as relates to urgent matters.

3.2 Applicant has not alleged nor proved any of the requirements required for an interdict.

3.3 This court has no power to grant a status quo on the order in instances where employees have already been dismissed.

The below points were then raised at the hearing:

1.1 The Labour Commissioner has already intervened in the matter as alleged by applicant which he has done in terms of Section 62 of the Industrial Relations Act.

1.2 The matter is currently pending for conciliation before the said officer who has not failed as yet to conciliate in as much as no certificate of unresolved dispute has been issued.

1.3 This matter is therefore wrongly and unlawfully before this court which has no jurisdiction to entertain it in as much as conciliation is still to be held.

I propose to deal with the second points of law. Regarding the issue of the intervention of the Labour Commissioner in terms of Section 62 (1) of the Act Mr. Banda for applicant stated that though the Labour Commissioner has intervened they cannot proceed with the next stage of the proceedings because there are no structures which government has formed to compliment the provisions of the new Industrial Relations Act. He therefore states that even if the Labour Commissioner can conciliate there would be a practical problem that the applicant would face; that of the next structure in terms of the Act.

Respondent contends that there is no evidence that has been brought in the form of affidavit that there are no structures government has created to compliment the new act.

Secondly, respondent contend that even if there were no such structures Mr. Banda must exhaust the available remedy before he can talk of the next step. Respondent says that by so doing applicant is actually pre-empting the decision of the Labour Commissioner.

From both parties it is clear that the matter must first go before the Labour Commissioner. This is not in dispute. This is in terms of Section 62 of the Industrial Relations Act.

Applicant complied with the provisions of the Act in this regard. What applicant has failed to do is to await the outcome of such intervention in terms of Section 62 (1) of the Act.

This is when applicant would be in a position to either proceed to the next step or have the matter finalised at this stage.

Regarding whether applicant has set grounds he relies upon for the matter to be treated as urgent,

respondent states that throughout the affidavit applicant has not provided us with such grounds. I have also gone through Johnson Lukhele's affidavit which is the founding affidavit. No reason has been mentioned why the court should waive the usual requirements regarding notice and service of applications and treat the matter as urgent.

Applicant has told the court that there is a threat of dismissal to the remaining cane cutters. The question that this court is concerned about is:

1. If the other cane cutters are dismissed unfairly can't they get redress in the normal course.

2. Is there any irreparable harm that would be remedied only through an urgent application?

The power of the court to hear urgent applications is contained in Rule 9(1) of the Industrial Court rules. It provides: "(1) The court may -

© On good cause shown, condone any failure of strict compliance with the rules, and in particular, but without derogating from the foregoing, in the case of an urgent application the court or the president acting in chambers may dispose with the forms and services provided in these rules and dispose of the matter at such time and in such place as the president may deem fit".

This rule expects the court to exercise its discretion judiciously. For instance, it would not be fair on applicants who have their cases pending in the court. Such applicants would suffer prejudice if this application would be given preference over them.

Because of these reasons I am of the view that applicant has not shown good cause why the court should dispense with ordinary procedure and rules of court and hear the matter as one of urgency.

Respondent's preliminary objection in this regard is therefore upheld.

The respondent's third preliminary objection is to the applicant's prayer for an interim interdict which will have the effect of ordering respondent to refrain from proceeding with its alleged illegal action which will result in further losses of jobs by the cane cutters.

Respondent's objection is that the applicant has not alleged nor provided any of the requirement for such a relief.

The requisites for an interdict were referred to in SWAZILAND DAIRIES (PTY) LTD VS MEYER 1970/76 SLR 91 AT 92 where Pike CJ, as he then was stated:

"To entitle applicant to the exercise by the court of its discretion to grant an interim interdict it is clear from the authorities 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 prima facie established, though open to some doubt;

b) That, if the right is only prima facie 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 rights;

c) That, the balance of convenience favours the granting of the interim relief; and

d) That the applicant has no other satisfactory remedy.

Can it be said that if applicant's members were unfairly dismissed by respondent that they have no other

satisfactory relief; or that on the face of the papers applicant has proved that 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?

It is our considered view that even if the employees remaining can be dismissed by respondent. They can always be re-instated in due coarse of an application for the determination of unresolved dispute in terms of Part VIII of the Industrial Relations Act would be filed.

If such an application is successful this court in terms of the law (Section 16) is empowered not only to order re-instatement but also to award compensation calculated at the employees rate of remuneration on the date of dismissal See Section 16 of the Industrial Relations Act No. 1 of 2000.

For these reasons we hold that the applicant or the employees on whose behalf the application has been brought will not suffer any irreparable harm if the interim relief is not granted. We are also of the opinion that the applicant has a satisfactory and adequate remedy under Part VIII of the Industrial Relations Act 2000. "Generally an applicant will not obtain an interdict if he can be awarded adequate compensation or amends by way of damages"

For this please see the judgement of Friedman A J.P. in Minister of Law and Order VS Committee of the Church Summit 1994 (3) SA 89 at 99.

It is therefore our considered view that the applicant has failed to satisfy the requirement of irreparable harm.

For the above reasons we uphold the respondent's third point in limine. The applicant's application is therefore dismissed.

Applicant to exhaust the remedies in terms of Part VIII of the Industrial Relations Act.

No order as to costs.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)