IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE	CASE NO. 144/2000
In the matter between:	
SWAZILAND STAFF ASSOCIATION	
FOR FINANCIAL INSTITUTIONS	APPLICANT
And	
SWAZILAND DEVELOPMENT	
& SAVINGS BANK	RESPONDENT
CORAM	
KENNETH NKAMBULE:	JUDGE
DAN MANGO:	MEMBER
GILBERT NDZINISA:	MEMBER
MR. L. MAMBA:	FOR APPLICANT
MR. M. SIBANDZE/	
ADVOCATE FLYNN:	FOR RESPONDENT

RULING

14/9/00

The applicant has brought this application on Notice of Motion for an order in the following terms:

a) Directing the respondent to recognise the applicant as the exclusive collective employee representative for all non-uniomsable staff employees in the employ of the respondent.

b) Awarding costs of this application against the respondent.

In its answering affidavit the respondent has raised the following points in limine:-

3.1 That the applicant has not complied with the rules of the above honourable court and has brought this matter on notice of motion and not any of the forms prescribed by Rule 3 of the Industrial Court rules. The applicant has not brought this matter on an urgent basis and has failed to allege urgency or any reason why court should dispense with the normal time limits and forms of service provided for in the rules of court.

3.2 That this matter is improperly before court in that the applicant has overlooked the statutory processes as laid down by the Industrial Relations Act of 1996 and has not reported a dispute neither has a certificate of unresolved dispute in the matter been issued by the Labour Commissioner. This is a matter

which falls under the definition of "DISPUTE" in the Industrial Relations Act, hence in accordance with the act and Rule 3 (2) of the Industrial Court rules. The matter ought to be reported to the Labour Commissioner. This court cannot entertain this matter which is improperly before it.

These points of law raise the following considerations:-

a) Is this a dispute in terms of Section 2 (interpretation section) of the Industrial Relations Act 1996?

b) If it is a dispute in terms of the above-mentioned legislation, does the court have jurisdiction to entertain the matter within the meaning of Part VIII of the Act.

Rule 3(2) of the Industrial Court rules provides that the court may not take cognisance of any dispute which has not been reported or dealt with in accordance to Part VIII of the Act.

The applicant has submitted that the present application does not compel the applicant to follow the provisions of Part VIII of the Industrial Relations Act - because Section 43(6) of the Industrial Relations Act provides a specific procedure to be followed in resolving disputes concerning recognition of collective employee representatives. In terms of Section 43(6) the applicant is entitled to lodge an application to the court for an order that the employee recognises it.

Section 2 (d) of the Industrial Relations Act defines a dispute to mean

"(d) recognition or non-recognition of an organisation seeking to represent employees in the determination of their terms and conditions of employment"

It therefore, follows that the application before us is a dispute within the meaning of the Industrial Relations Act. If therefore, it is a dispute in terms of the Act is the applicant obliged to follow the provisions of Part VIII of the Act? On the basis of Rule 3 (2) of the Industrial Court rules the court may not entertain disputes brought before it in breach of the provisions of Part VIII.

The instance where the court can entertain such applications is when they have been brought under the certificate of urgency. This is the next point raised by respondent that such an application has not been made under the certificate of urgency.

On the face of the applicant's papers it is clear that the application has not been brought under a certificate of urgency. No facts have been presented on the papers filed of record showing good cause why the court has to dispense with forms and procedures as laid down by the rules of court and treat this matter with urgency.

To enforce the provisions of Section 43 (6) applicant has to go via the conciliation machinery as laid down in Part VIII of the Act.

Applicant referred the court to the Judgement of this court issued by my brother Nduma J.P. in SWAZILAND MANUFACTURING AND ALLIED WORKERS UNION VS SWAZI WIRE INDUSTRIES, Industrial Case No. 280/99 where on page 2 he states;

"It is our considered view that in lodging a Section 43(6) application the applicant need not comply with the procedure provided for under Part VIII of the Act. If this was the intention of the legislature, it would have stated so in a clear and unequivocal language".

I however, am of the view that if this application falls under the category of disputes in terms of the Act, then Section 43(6) must be read in conjunction with Part VIII of the Act.

See the Judgement of Hannah C.J. In SWAZILAND FRUIT CANNERS VS PHILLIP VILAKATI AND ANOTHER Industrial Court Appeal 2/87 where the learned Chief Justice as he then was had this to say:

"... The policy of the Industrial Relations Act is that before a dispute can be ventilated before the Industrial Court it must be reported to the Labour Commissioner who is obliged to conciliate with a view to achieving a settlement between the parties. Where the conciliation is successful machinery exist for the agreement arrived at to be made an order or award of court, but where the dispute remains unresolved the Labour Commissioner is obliged to issue a certificate to that effect and then, and only then, may application be made to the Industrial Court for relief.

With all the respect there is in the world I cannot follow the Judgement in SWAZILAND MANUFACTURING AND ALLIED WORKERS UNION VS SWAZILAND WIRE INDUSTRIES.

If this decision is followed the result would be absurdity. The spirit of the Industrial Relations Act mostly desires that Industrial disputes be settled, if possible, by means of conciliation rather than be determined in the more formal court processes.

The existence of Part VIII saves the court from hearing many time-consuming cases which can be deliberated upon and resolved by a neutral and expert labour officer. It is therefore important to observe Part VIII of the Act because if not observed the results are that the court has no jurisdiction to entertain the matter.

Our findings therefore are as follows:

1. We have found that the subject matter of the application is a dispute in terms of the Act (Industrial Relations Act 1/1996).

2. In the absence of reasons to treat the matter as urgent the applicant has no alternative, but to comply with Part VIII of the Act and Rule 3 (2) of the Industrial Court rules.

The application is therefore, dismissed. No order as to costs.

Members concur.

KENNETH P. NKAMBULE

JUDGE (INDUSTRIAL COURT)