IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE   CASE NO. 89/2000

In the matter between:

SWAZILAND WATER SERVICES AND ALLIED

WORKERS UNION (SWASAWU)   APPLICANT

and

SWAZILAND WATER SERVICES CORPORATION   RESPONDENT

CORAM:

NDERI NDUMA: PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

E. HLOPHE: FOR APPLICANT

S. EARNSHAW: FOR RESPONDENT

REASONS FOR THE RULING

06.12.2000

The parties presented an Agreement dated the 30th day of March, 2000 to be made an order of the court.

Upon reading the Agreement and in particular pages 4 and 5 thereof, the court meromotu raised the question as to whether paragraphs 1 and 2 on page 5 were not in violation of the rights of the members who had elected or already opted to join SWSCPF.

The court further requested submissions to be made by counsel for the parties as to whether, Section 43 (9) authorised the union SWASAWU to withdraw or cancel rights of some of its members that had already accrued by fact of having joined SWSCPF.

Upon hearing submissions by counsel for the parties and after a careful construction of Section 43 (9) I reached the conclusion that this provision did not authorise a recognised union to cancel or withdraw rights that had already accrued to some of its members especially where such members have not been cited as parties in this Application. Such cancellation or withdrawal would have been arbitrary in the circumstances of the case.

For the aforesaid reason, I declined to register the Agreement that purported to put a seal of approval to such arbitrary powers without allowing the individual members a hearing.

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I do recognise the dangers of individual members treating directly with an employer where there is a recognised union and this court has frowned at such conduct since it strikes at the very core of collective bargaining.

The employer ought to be injuncted from engaging in such practices in good time to avoid agreements

being entered into with third parties as is the case herein.

NDERI NDUMA

PRESIDENT - INDUSTRIAL COURT