IN THE INDISTRIAL COURT OF SWAZILAND

HELD AT MBABANE	CASE NO. 70/2002
In the matter between:	
ZODWA KINGSLEY & 10 OTHERS	APPLICANT
and	
SWAZILAND INDUSTRIAL	
DEVELOPMENT COMPANY LIMITED	RESPONDENT
CORAM	
KENNETH NKAMBULE:	JUDGE
DAN MANGO:	MEMBER
GILBERT NDZINISA:	MEMBER
FOR APPLICANT:	P.M. SHILUBANE
FOR RESPONDENT:	P.R. DUNSEITH

RULING ON POINTS IN-LIMINE

12/09/02

The applicant has brought an application for an order -

a) waiving the limits time and form of service prescribed by the rules of court and hearing this matter urgently.

b) Interdicting and restraining the respondent from making any deductions from the applicants' statutory benefits which are due and payable to them.

c) Payment of the sum of E1,385,375-00

d) Costs of suit

e) Further and/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 basis of which this court was moved to dismiss the application with costs on the scale of attorney and own client, namely:

i) Lis Pendens -

Proceedings between the same parties in which substantially the same relief is sought are pending before this honourable court. Accordingly the respondent is raising the plea of lis pendens.

ii) Urgency -

That the applicants have failed to make out a proper case for urgency in that:

a) The fact that an employee has no other source of income and is suffering irreparable financial harm is not a valid ground in law for an urgent application entitling the applicants to "jump the queue" to the prejudice of other litigants in this honourable court.

b) The loss of income and other benefits is the natural consequence of the termination of the services of an employee.

c) The respondent had tendered payment of net statutory terminal benefits, as appears from the annexed letter marked "R". The applicants have failed to take advantage of this and collect their benefits. In the premises, the alleged financial harm and lack of income is attributable to the applicants' own willful omission.

iii) Irreparable harm -

That the applicants are seeking a final interdict. The applicants must satisfy the court that they will suffer irreparable harm if the interdict is not granted, and that no other satisfactory remedy is available.

iii) Clear right -

That a claimant for an interdict must prove a clear right to the relief sought, Lis pendens -

Starting with the first point;

The validity of the plea of lis-pendens depends on whether the same suit is in fact pending elsewhere. According to Beck's "Pleadings in Civil Actions" "It must be pending elsewhere between the same parties, concerning the same thing and founded on the same cause of action. The demand made and the point at issue must be the same in the pending suit as in the suit which it is sought to stay. And of course the court in which the suit is pending must have jurisdiction to entertain it".

Basically there are two pending matters under case No. 70/2002. There is the main application. There is also an interlocutory application dated the 25th June 2002.

In the Notice of Motion dated 25th June 2002 the applicants are claiming re-instatement of their benefits including their salaries forthwith with effect from the date of the alleged termination of their employment with the respondent on 23rd January 2002, pending the final determination of the action for compensation and/or reinstatement instituted by the applicants against the respondent under case No. 70/02.

The instant case is the third application. This is an application for an interdict restraining the respondent from making any deductions from the applicants' statutory benefits.

The brief history of this matter is that the application of the 25th June 2002 could not be ventilated in its entirety. The parties ended up reaching an agreement that as a matter of fact the respondent was willing to pay to the applicants their statutory benefits. However, the bone of contention was the exact amounts payable to each person. The applicants are saying they want all their money without any deductions and the respondent say when paying these amounts they will deduct their dues in accordance with what each employee owes the institution.

This application is as a result of the disagreement.

It is therefore clear that the present application is not similar to that of 25th June 2002. It is therefore my opinion and an opinion held by the members that the application pending before this court is different from the present application. It is also our opinion that bringing the present application to court does not amount to abuse of the court process.

Urgency:

The basis on which the applicant avers that the matter be heard as one of urgency is contained in paragraph 10 of the applicant's founding affidavit, namely:

10.1 The matter is urgent by reason of the fact that the applicants have no other source of income and are suffering irreparable financial harm to the extent that those who have housing loans with financial institutions are being threatened with fore closure.

Mr. Dunseith for the respondent contends that the fact that an employee has no other source of income and is suffering irreparable financial harm cannot be a valid ground in law for an urgent application entitling the applicant to "jump the queue" to the prejudice of other litigants. He further states that the loss of income and other benefits is the natural consequence of termination of the services of an employee.

The power of this court to hear urgent applications is contained in Rule 9 (1) (c) of the Industrial Court Rules. The Rule provides as follows:

"(1) The court may -

(c) on good cause shown, condone any failure of strict compliance with these 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 dispense with the forms or services provided in these rules and dispose of the matter on such time and in such place as the president may deem fit".

This rule gives a wide discretion to the court either to refuse or grant the application. However, the court should exercise such discretion judiciously. For instance the applicant should show good cause why the court should

dispense with the ordinary procedure and rules of court and hear the matter as one of urgency.

In the instant case the applicants aver that the matter is urgent because they have no other source of income. Secondly, they are suffering irreparable financial harm to the extent that those who have housing loans with financial institutions are being threatened with fore closure.

On this ground Mr. Dunseith, for respondent submitted that that can never be a ground for dispensing with the normal rales of court so as to get the matter heard on urgent basis. He referred the court to the case by Parker J in SWAZILAND AGRICULTURAL AND PLANTATIONS WORKERS UNION VS UNITED PLANTATIONS (SWD) LTD Case No. 79/98. In this case Parker J, as he then was, referred to a number of South African decisions and Swaziland ones in support of this proposition.

In FOOD AND ALLIED WORKERS UNION VS NATIONAL CO-OPERATIVE DAIRIES (1989) 9 ILJ 1033 (IC) the applicant workers had been dismissed for going on strike. They applied for interim relief and based the urgency of the application inter-alia on the fact that they would lose income and would have to vacate accommodation supplied by the company. The court found that the loss of income is a normal consequence of every dismissal and could therefore not be regarded as an exceptional circumstance to warrant urgent interim relief.

See also the dictum of Banda, P in Pheneas Vilakati Vs J.D. Group (Pty) Ltd Industrial Court case 41/97 page 2:

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

We agree with Mr. Dunseith that both grounds can never be grounds for dispersing with the normal Rules of Court so as to get the matter heard on urgent basis.

From the above, we hold that the applicants have not shown good cause why the court should disperse with the ordinary procedure and rules of court and hear the matter as one of urgency. The respondent's point in limine to the applicants' prayer that the matter be heard as one of urgency is therefore upheld.

The court will not pronounce on the other two points raised by Mr. Dunseith as this point alone disposes of the application. For the above reasons and conclusions the applicants' application is dismissed.

Mr. Dunseith's application for costs cannot be granted there will be no order as to costs.

Members agree.

KENNETH P. NKAMBULE

JUDGE - INDUSTRIAL COURT