IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 208/04

In the matter between:

SWAZILAND MEAT INDUSTRIES (PTY) LIMITED Applicant

And

SWAZILAND MANUFACTURING AND ALLIED

WORKERS UNION (SMAWU) 1st Respondent

EMPLOYEES OF THE APPLICANT WHO ARE UNIONISABLE
(who will be taking part in the strike action

at Swaziland Meat Industries) Further Respondents

CORAM:

NDERI NDUMA : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMBER

N. MULELA : FOR APPLICANT

M. THOMO : FOR RESPONDENT

JUDGEMENT -14 JULY 2004

The Applicant brought a Notice of Motion 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 and permitting that this matter be heard as one of urgency.
2. That a rule nisi returnable on a date to be determined by the above Honourable Court, do hereby issue calling upon the Respondents to show cause on a date to be determined by the Court why the following orders should not be made final,
3. That the Respondents be and are hereby interdicted and restrained from;

3.1 Remaining or occupying the Applicant's premises during the duration of the strike action.

3.2 Interfering, threatening, preventing and/or intimidating employees of the Applicant from coming to work and/or carrying on their normal duties at Applicant's undertaking.

3.3 Directing and ordering that the Respondents be restricted to a radius of fifty (50) metres from the parameters of the Applicant's parameter fence or at least across the main road with respect to the Applicant's main entrance.

4. That the strike action which commenced at 11:35 a, on Wednesday the 7th July 2004, be and is hereby declared illegal.
5. Costs of suit in the event that the Application is opposed,

6. That a rule nisi operate with immediate effect pending the return date.
7. Further and/or alternative relief.

The application Is founded on the Affidavit of Ronald Alfred Woods the Marketing Manager of the Applicant.

On the 8th July 2004 the matter was called in chambers wherein Ms. Mulela appeared for the Applicant in the absence of the representatives of the Respondent.

No return of service was filed and the Applicant was directed to proof service of the application accordingly.

The matter was then heard in court on the 9th July 2004 before the President in the absence of the members with the consent of the parties in terms of Section 6 (7) of the Industrial Relations Act No. 1 of 2000.

The Respondent filed an Answering Affidavit from the bar deposed to by Patrick Mduduzi Khumalo, the President of the Respondent.

The Applicant notwithstanding a notification by the court that it may be necessary to file a Replying Affidavit in response to the averments in the Answering Affidavit chose to proceed without doing so.

From the Founding Affidavit and arguments by counsel, the case of the Applicant was two pronged;

1. That the strike action by the Respondents should be declared illegal because;

(a) The notice issued by the Respondents in terms of Section 86 (7) of the Industrial Relations Act was defective in that it did not stipulate the date and the time of the commencement of the strike.
(b) In any event the strike action commenced before expiry of 48 hours from the time the second notice was issued.

2. In the alternative, the Respondents be restricted to a radius of fifty (50) metres from the parameters of the Applicant's fence or at least across the main road with respect to the Applicant's main entrance.

The averments in support of the first argument are found in paragraphs 4.1-5.5 of the Founding Affidavit wherein two issues emerge: that the notice in terms of Section 86 (7) was issued on the 5th July 2004 whereupon the Applicant invited the 1st Respondent to a strike management meeting that took place on the 6th July 2004.

The issues on the table were interalia the exact date and time when the strike would commence, protection of company assets and customers wishing to enter the premises and picket rules. All this was in terms of the Recognition and Procedural Agreement between the parties and the Act.

The Applicant avers that the 1st Respondent was not cooperative in this meeting and refused to give the necessary undertakings for the strike management.

In response thereof, the Applicant issued the 1st Respondent with a lockout notice in terms of Section 86 (8) of the Act. The notice marked "SM14" is dated the 6th July 2004 and the lock out was to commence on the 8th July 2004. As at the date this matter was argued, the lock out was therefore in place in terms of the notice.

The 1st Respondent in response to the aforesaid allegations by the Applicant avers in paragraph 9 of the Answering Affidavit that it provided the Applicant with the date and time when the strike would commence in a letter dated the 7th July 2004. This the Applicant could not refute having failed to file a

Replying Affidavit. The Respondent further denied that the strike action commenced

4

before the expiry of the 48 hours from the time the Section 86 (7) notice was issued. Again the Applicant could not refute this since their counsel opted not to file a Replying Affidavit in response.

Most importantly, the 1st Respondent asserts that the strike notice issued in terms of Section 86 (7) was in full compliance with the provision which reads as follows;

"86 (7) For a strike action to be lawful under sub-section (6) a new written notice shall be given by the party intending to engage on a strike action to the other party or parties to the dispute and to the office of the Commissioner of Labour and the Commission at least forty-eight (48) hours before the commencement of such action."

Looking at the notice itself and the averments of the 1st Respondent in the Answering Affidavit that were not responded to by the Applicant, the 1st Respondent fully complied with the requirements of the Act.

To entitle an Applicant to the exercise by the court of its discretion to grant an interdict it suffices for the Applicant to show:

(a) A prima facie right to the relief sought.
(b) A well-grounded apprehension of irreparable harm if the interim interdict is not granted and the ultimate relief is eventually granted.
(c) A balance of convenience favouring the grant of the interdict,
(d) The fact that the Applicant has no other satisfactory remedy.

See South Africa Permanent Building Society v Hlongwane; High Court of Swaziland 1982-86 (11) SLR 337 per Dunn A3.

5

As a matter of fact, as at the time the application was argued, the Applicant was seeking for a final order having opted not to file a Replying Affidavit in the matter and the application was fully argued accordingly,

The Applicant was completely unable to establish that the strike action by the Respondents was illegal and therefore did not prove a prima facie right let alone a clear one to the relief sought. The parties had reached a deadlock in the salary negotiations and the Respondents were fully entitled to call a strike in conformity with the provisions of the Act. The court is satisfied that the 1st Respondent complied with the requirements of Section 86 and in particular Section 86 (7) of the Act. Further the court is satisfied that the strike action commenced at least 48 hours from the time the second notice was issued in terms of Section 86 (7).

As regards the directive that the 1st Respondent's members be restricted to a radius of fifty (50) metres. It is common cause that the Applicant had taken a counter measure to the strike by declaring a lock out in terms of Section 86 (8) of the Act. This meant that the workers engaged in the strike were to remain outside the premises of the Applicant until the issues the cause of the strike and the lock out had been resolved through negotiations. The court could do no more in this respect. The pressures that result from the power play by the parties locked in a dispute as in the workers being locked out and implementation of no work no pay rule and on the other hand the employer experiencing loss of production operate to curtail the period of the impasse. It would be inequitable for the court to arm twist one party in the circumstances unless there is clear evidence of illegality by either party to the dispute.

6

The Applicant had opted for a statutory safeguard of a lock out in the circumstances. In terms of

Section 107 (1) it is lawful for workers engaged in a strike or lockout to be near or at the place of work for purposes of peaceful picket. There was no case of violence made out before me in this matter.

By and large, the Applicant failed to establish all the requirements to entitle it to an interdict whether interim or otherwise and the application must fail in its entirety.

No order as to costs.

NDERI NDUMA

JUDGE PRESIDENT -INDUSTRIAL COURT