

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 471/08

In the matter between:

JURIS MANUFACTURING (PTY) LTD

Applicant

and

ZWELI MDLULI & 645 OTHERS

1st Respondent

ZANELE SIBANDZE

2nd Respondent

QUEEN HLANDZE

3rd Respondent

LINDIWE SHONGWE

4th Respondent

SABELO MAMBA

5th Respondent

CORAM:

P. R. DUNSEITH: PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

FOR APPLICANT: A. FAKUDZE

FOR RESPONDENT: E. SIMELANE

J U D G E M E N T - 24/10/08

1. The Applicant instituted urgent motion proceedings in the Industrial Court, seeking a rule nisi operating with interim effect.
2. The application cited "Zweli Mdluli and 645 others" as 1 Respondent but gave no indication as to whom these 645 others might be.

3. Although there was no proper proof that the application had been served on any of the Respondents, the court was persuaded to issue an ex parte rule nisi with certain interim relief on the basis of the pressing circumstances described in the founding affidavit. We declined however to issue any rule or order against the anonymous 645 others cited in the papers.

4. The order we issued called upon Zweli Mdluli and the 2nd - 5th Respondents to show cause why a final order should not be granted:

4.1. Interdicting and restraining the Respondents and all people acting on their instructions from disturbing violently, harassing and threatening injury to persons on duty employed by Applicants at Nhlangano Industry Factory.

4.2. Interdicting the Respondents from vandalizing property of the Applicant and its factory site.

4.3. Interdicting and restraining the Respondents and people acting in their instructions from continuing to hold meetings near or close to the premises of the Applicant and further keep a distance of about 100m from the company premises.

4.4. Directing the sheriff or his lawful deputy to effect the order and seek assistance from members of the Royal Swaziland Police, should it be necessary, in carrying out his aforesaid duties.

4.5. Further directing that members of the Royal Swaziland Police take such action as may be necessary to assist in order to ensure that work continues at Applicant's business peacefully and uninterrupted.

We directed that this rule nisi should operate with immediate interim effect.

5. The Respondents duly opposed confirmation of the rule, and they have raised as a point in limine that the Applicant should have joined the Swaziland Manufacturing & Allied Workers Union ("SMAWU") as a necessary party to the proceedings.

6. It is well - established law that a party must be joined of necessity if it has a direct

and substantial interest in any order the court might make, or if such an order cannot be sustained or carried into effect without prejudicing that party (unless the court is satisfied that it has waived its right to be joined).

See **Amalgamated Engineering Union v Minister of Labour 1949 (3) SA 637 (A).**

7. It is common cause that the Applicant has recognized SMAWU as the collective bargaining representative for all its unionisable employees. As such, SMAWU represents the interests of all employees within its bargaining unit, whether or not they are members of the union.

8. It is also common cause that some if not all the Respondents have been cited in their capacity as SMAWU shop stewards.

9. It is most unusual to cite the office bearers of a union in their official capacity without citing the union itself. It is self-evident that an order made against shop stewards in their official capacity will have a direct and substantial impact on the union they represent.

10. To interdict the shop stewards from holding meetings near the Applicant's premises and to require them to keep a distance of 100 metres from the company premises would operate to the direct and substantial prejudice of SMAWU in carrying out its functions and obligations as the recognized employee representative.

11. In our view SMAWU has the necessary interest in the outcome of this application to warrant that it should have been joined as a necessary party.

12. The point raised in limine must succeed and the application is to be stayed pending joinder of SMAWU.

13. Both representatives of the parties confirmed to the court that the situation at the Applicant's factory premises has stabilized following the re-engagement of many of the dismissed employees. The Applicant also concedes in its replying affidavit that the employees were not violent, contrary to what was alleged in its founding affidavit. In these circumstances the court considers it just that the interim order be discharged.

14. We make the following order

(a) The application is stayed pending the Applicant's joinder of the

Swaziland Manufacturing & Allied Workers Union as a Respondent;

(b) The interim order contained in paragraph 2 of our order dated 2nd October 2008 is discharged.

(c) The Applicant is to pay the costs of the preliminary hearing on the issue of joinder.

The members agree.

**PETER R. DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT**