IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 429/2009

In the matter between:

SWAZILAND TRANSPORT WORKERS UNION **1[5]" APPLICANT**

MICHAEL MFANFIKILE GINA AND 10 OTHERS **2nd APPLICANT**

and

CARGO CARRIERS SWAZILAND (PTY) LTD **RESPONDENT**

CORAM:

S. NSIBANDE	**PRESIDENT**
JOSIAH YENDE	MEMBER
NICHOLAS MANAMA	MEMBER
MR. B. TFWALA	**FOR APPLICANT**
MR. **E. MAGAGULA**	**FOR RESPONDENT**

RULING ON POINTS OF LAW - 19/08/2009

1. The Applicant an employee organization approached the court together with 11 other applicants by way of motion supported by a certificate of urgency seeking an order:

"1 *Directing the Respondent to bring back the status quo in terms of wages, housing and conditions of employment since 26th February 2009 to date of this order and thereafter.*

2. Court (sic) of application at attorney and own client scale."

3. The Applicants filed two founding affidavits in support of their application in which they set out that on 14th October 2008 the Respondent gave notice of a restructuring exercise that could result in possible retrenchment.

4. They set out that the parties engaged in consultations on the restructuring from

December 2008. They allege that$_A$16th January 2009 the parties agreed that, as part of the restructuring the Respondent would implement what was called the owner driver scheme and that a provisional agreement was to be drafted and signed which would be the basis of the owner driver scheme implementation.

5. The Applicants complain that the Respondent then started to implement the owner driver scheme outside the terms of the provisional agreement which had been drafted but not signed. A dispute was reported to the Conciliation, Mediation and Arbitration Commission but before it could be dealt with by the Commission, the parties agreed that the Applicants withdraw the dispute so that they could have further consultations on the restructuring. It is alleged that the parties last met on 9th July 2009 for consultations and that the Respondent is expected to consider certain proposals tabled by the Applicants and to return to the consultation table thereafter.

6. The 1 Applicant complains that eleven of its members are no longer enjoying the benefits arising out their employment contracts. It is for that reason that they approached the court to *"bring back the status quo."*

7. The Respondent filed a notice to raise points of law and did not file an affidavit in opposition of the application. The Respondent submitted that no legal grounds have been established why the application should be enrolled as one of urgency - that the Applicants have failed to set out explicitly the circumstances which render the matter urgent as required by Rule 15 2 (a) and (b) and (c) of the Rules of Court. Respondent complains that the Applicants have also not exhausted the provisions of Part 8 of the Industrial Relations Act of 2000 in that a certificate of unresolved dispute has not yet been issued.

8. At the hearing of the matter, the Respondent representative raised further two points in limine from the bar, namely that the prayer sought by the Applicants vague and embarrassing and not understandable therefore incapable of enforcement even if granted and that the further Applicants are not mentioned in either of the founding affidavits contrary to the provisions of Rule 14 (5) of the Rules of the Industrial Court Rules which enjoins an applicant to set out clearly and concisely the names, description and addresses of the parties.

9. The Applicants have made no attempt to comply with Rule 15 of the Industrial Court Rules 2007. They make no allegation why the matter is urgent. They do not set forth explicitly reasons why the provisions of Part V111 of the Act should be waived nor do they set out reasons why they cannot be afforded substantial relief at a hearing in due course Wlwi^he matter^wash^ submitted that the court should condone the failure to comply with the **rules in terms of Section 11 of the Industrial Relations Act as**

amended. Section 11 reads:

"The court shall not be strictly bound by the rules of evidence or procedure which apply in civil proceedings and may disregard any technical irregularity which does not or is not likely to result in a miscarriage of justice."

10. the failure to comply with the requirements set out in Rule 15(2) of the Industrial Court Rules 2007 does not amount to a technical irregularity. The requirements are there to enable the court to exercise its discretion judiciously whether or not to enrol a matter as one of urgency. Since the court will not normally take cognisance of a dispute that has not been through the conciliation process prescribed by part V111 of the Industrial Relations Act No.1 of 2000 as amended the Applicant needs to satisfy the court not only that the matter is sufficiently urgent to justify the usual time limits prescribed by the Rules of Court being curtailed, but also that there is good cause for dispensing entirely with the conciliation process. He cannot do so unless he sets forth explicitly the circumstances which render the matter urgent, and the reasons why he cannot be afforded substantial redress if the matter were to be dealt with in the normal way.

Vusi Gamedze v Mananga College I.C. Case No.267/06

11. As we have stated above, the Applicants in this matter have not bothered to comply with the requirements of Rule 15(2) of the Industrial Court Rules at all. Nor are we told when the status quo that must be "returned" was taken away. The two founding affidavits filed by the Applicants are not helpful with regard to the circumstances of the Applicants and do not state why this matter should be treated as one of urgency.

12. With regard to costs, which the Respondent sought, it is our view that Respondent is entitled to costs of the application because of the Applicant's failure to comply with the basic requirements of the Rules of Court. As this court stated in the matter of Thabiso Goodman Hlanze v Medscheme Administrators (Swaziland) (Pty) Ltd I.C. Case No. 290/04 "there is a limit beyond which the Applicant cannot escape the ineptitude of his chosen representative.

13. Similarly in this matter, the Respondent has been put to the expense of opposing a still-born application. It should not have to bear that expense.

The application is dismissed with costs. The members agree.

S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT