IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE **CASE NO. 238/09**

In the matter between:

SIYASPA (PTY) LTD T/A NHLANGANO SPAR **APPLICANT**

And

SWAZILAND MANUFACTURING & ALLIED WORKERS UNION **RESPONDENT**

CORAM:

NKOSINATHI NKONYANE DAN **JUDGE MEMBER**

MANGO GILBERT NDZINISA **MEMBER**

FOR APPLICANT FOR RESPONDENT **MR. B. S. DLAMINI MR. A. FAKUDZE**

RULING ON POINTS OF LAW
21.08.09

[1] This is an application brought by the applicant against the respondent for an order in the following terms;

*"1. That an order be and is hereby issued declaring that the _____jBspondent!s-jmBmhB]2LaLapp^*

fallen below the requisite threshold and therefore that the applicant is permitted to de-recognise the respondent union.

2. *Costs of application in the event of unsuccessful opposition hereto.*

3. *Further and/or alternative relief.."*

[2] When the matter first appeared before the court on 18.06.09 the respondent's representative told the court that he was not aware of the application and indicated that they intend to file an answering affidavit. The matter was postponed until 25.06.09. The respondent however failed to file its answering affidavit on that day. Up to this day the respondent has not filed its answering affidavit.

[3] The respondent has, however, filed a notice to raise points of law. The points of law raised are as follows:-

3.1 **Failure to Give Notice**

The respondent submitted that the applicant has not notified the respondent of the depletion of the members of the respondent to be below the level of recognition as required by the law. The respondent abandoned this point of law when it became apparent that he wasj-ejying on an amended provision of the Industrial Relations Act.

In terms of the new legislation, the Industrial Relations (Amendment) Act, 2005 there is no requirement for the applicant to give notice to the respondent. Section 42(11) of the amended legislation simply states that an employer may make an application to this court for the withdrawal of recognition if the organization's representativeness falls below the representativeness contemplated in subsection (5)(a) for a continuous period of more than three months. This point of law is accordingly dismissed.

3.2 **Recognition**

The respondent submitted that the recognition agreement annexed on the founding affidavit is a recognition agreement between it and some other 'entity' and not the applicant. The respondent has not filed an answering affidavit to dispute the validity of this document. The respondent's representative is not a party to the application and cannot be allowed to give evidence from the bar. Before the court the evidence of the applicant stands undisputed that the recognition

agreement annexed is a valid document between the parties. This point is therefore also dismissed.

3.3 **Resignations**

The respondent submitted that the resignation letters annexed to the founding affidavit are addressed to the allegation that the resignations are lawful and that, they meet the respondent's constitutional requirements and policies. Firstly, it is not correct that resignation letters are addressed to the applicant. The resignation letters are addressed to the respondent. Secondly, there was no evidence before the court that the respondent's members did not follow the respondent's constitutional requirements and policies when they tendered their resignations. If this was the case, the respondent should have filed an answering affidavit and inform the court about the constitutional requirements for resignation from the union. The respondent's representative rightfully abandoned this point. It is accordingly dismissed.

3.4 **Membership**

It was argued on behalf of the respondent that the applicant has not alleged that the unionisable staff remained at 53 since 2006 so as to conclude that only 13 members remained after the alleged resignation of 22 members. In paragraph 8 of the founding affidavit, the applicant stated that the resignation of 22 members meant that only 13 members remained which falls short of the agreed threshold of 27 employees which the parties agreed to be the required 50% of the membership. This evidence remains undisputed as the respondent did not file opposing papers. The court therefore has no legal basis not to accept it as reflecting the correct state of affairs at the workplace. This point is therefore also dismissed.

[4] Taking into account all the foregoing observations the court will dismiss the points of law with costs. The respondent is granted seven days from the date of this ruling to file its answering affidavit if it still

intends to pursue the matter.