IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO.72/06

In the matter between:

SWAZILAND MANUFACTURING AND ALLIED WORKERS UNION **APPLICANT**

and

SWAZILAND UNITED BAKERIES (PTY) LTD **RESPONDENT**

CORAM:

NKOSINATHI NKONYANE: **ACTING JUDGE**

GILBERT NDZINISA: **MEMBER**

DAN MANGO: **MEMBER**

FOR APPLICANT: **S. MADZINANE**

FOR RESPONDENT: **J.N. HLOPHE**

R U L I N G 05.05.06

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

"1. Registration of the Arbitrator's Award in respect of overtime allowances for drivers and van assistants.

2. Costs of this application.

3. Further and/or alternative relief."

[2] The application is opposed by the respondent. In its Answering Affidavit the respondent raised two points of law, namely that this court has no jurisdiction to register an arbitration award, and secondly, that a similar application between the same parties was pending before the court under case No. 219/03.

[3] In its Replying Affidavit the respondent attached a document marked "SMAWU 5" which is a notice of withdrawal of case No. 219/03. That case having been withdrawn by the respondent, the second point of law must therefore fall away.

[4] The court is therefore presently called upon to make a ruling on the first point of law, whether this court has jurisdiction to make an order for the registration of the arbitration award or not.

[5] It was argued on behalf of the respondent that this court has no power to register an arbitration award. It was argued that it is only the High Court which has such power in terms of The Arbitration Act No. 24 of 1904.

[6] It was argued to the contrary on behalf of the applicant that this court does have jurisdiction in terms of Section 8(1) and Section 64 (1) (C) (i)-(iii) of the Industrial Relations Act No.l of 2000.

[7] The answer to the point of law raised lies on whether the arbitration award sought to be registered was carried out in terms of the Arbitration Act or the Industrial Relations Act. The arbitration award is annexed to the applicant's application and marked "SMAWU 2." It is in the letterheads of the Conciliation Mediation and Arbitration Commission hereinafter referred to as CMAC. The award was made by the arbitrator, Happiness Dludlu, on the 15th January, 2003.

[8] On page 2 of the award, the arbitrator stated that she was appointed to

arbitrate in terms of Section 85 of the Industrial Relations Act, 2000. The arbitrator further stated as follows on page 2 of the award"-

"***According to the arbitration form the parties require me to make a determination on the impasse on the collective agreement negotiations. The issues which I have to determine are public holidays, overtime, emergency loans and negotiating salary or wages....***"

[9] It is therefore clear to the court that the arbitration process was initiated under the auspices of CMAC. CMAC is the creature of the Industrial Relations Act, 2000. It was established in terms of Section 62 of the Act. The arbitration award in issue before the court therefore was made in terms of the Industrial Relations Act of 2000. The Arbitration Act of 1904, which was enacted about hundred and two years ago, clearly has no applicability in this matter.

[10] The issues involved in the arbitration were labour matters between an employer and its employees. The Industrial Court therefore has exclusive jurisdiction to hear, determine and grant any appropriate relief in this matter.

[11] It was also argued on behalf of the respondent that the arbitration was concluded in January 2003 and that the Industrial Relations (Amendment) Act No. 3 of 2005 was therefore not applicable. This argument will be dismissed by the court. The Industrial Relations (Amendment) Act No. 3 of 2005 did not replace or repeal the 2000 Act. The Industrial Relations (Amendment) Act clearly states in Section 1 that it shall be read as one with the Industrial Relations Act, 2000. Section 17 (2) of the amended Act states that:-

> "*An arbitration award made under this Act shall be enforceable as if it was an order of the Court..*"

(12) The enforcement of orders of this court is provided for in Section 14 of the Industrial Relations Act. In terms of Section 14(a) an order directing the payment of money or the delivery of any property shall be enforceable by execution in the

same manner as an order of the High Court.

(13) Section 14 (b) provides that an order of this court directing the performance or non-performance of any act shall be enforceable by contempt proceedings in the same manner as an order of the HighCourt.

[14] In terms of Section 17 (2) arbitration award has the same status as an order of the Court. The Court must therefore consider what type of order did the arbitrator make. Was it an order for payment of money or delivery of property as envisaged by Section 14 (a) or it was an order directing the performance or non-performance of an act as envisaged by Section 14 (b).

[15] The arbitration award annexed is however incomplete. It has only six pages. We were unable to read the actual findings of the arbitrator. Unfortunately, this is a usual occurrence in this Court where legal practitioners do not bother to double check if the papers are in order, but tend to rely on their secretaries.

[16] In paragraph 7.1 of the founding affidavit however the applicant stated that the arbitrator made an order that the respondent should pay overtime allowances to the drivers and van assistants. The respondent in its Answering Affidavit admitted that that was the finding of the arbitrator. The court will therefore proceed on the basis that it was the arbitrators order that the respondent should make payment of money. In terms of Section 14 (a) therefore such an order is enforceable by execution.

[17] Since the provisions of Section 17(2) state clearly that an arbitration award made under this Act shall be enforceable as if it was an order of the Court. The registration of an arbitrator's award is therefore a necessary step in order to give effect to the provisions of Section 17(2) of the Act.

[18] In the light of the aforementioned observations the point *in limine* is dismissed with costs.

(19) The members agree.

NKOSINATHI NKONYANE AJ
INDUSTRIAL COURT