

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

**CASE
585/08**

NO.

In the matter between:

**THEMBELIHLE VILAKATI
NTOMFUTHI MALINGA
ZAMAGEBA MATSENJWA
MUMCY MADUNA
NTOMBIYENKOSI TSELA
SIHLE GWEBU THOBILE
ZWANE HAPPY
SIHLONGONYANE
NELISIWE MSWELI
SITHEMBILE GWEBU
TREASURE DLAMINI**

**1ST APPLICANT 2ND
APPLICANT 3RD
APPLICANT 4TH
APPLICANT 5TH
APPLICANT 6TH
APPLICANT 7TH
APPLICANT 8TH
APPLICANT 9TH
APPLICANT 10TH
APPLICANT 11TH
APPLICANT**

And

VALLEY FARM CHICKENS (PTY) LTD)

RESPONDENT

CORAM:

NKOSINATHI NKONYANE

GILBERT NDZINISA DAN

MANGO

JUDGE

MEMBER

MEMBER

**FOR APPLICANTS
FOR RESPONDENT**

**A. FAKUDZE
P.L. MNGOMEZULU**

JUDGEMENT 21.01.09

This application came to court on a certificate of urgency. The applicants, who are the employees of the respondent, are seeking an order in the following terms:-

- "1. Dispensing with the normal forms and time limits provided for in the rules of the above Honourable Court and dealing with this matter as an urgent matter.
2. Condoning any non-compliance with rules of court relating to time limits, manner of service of court process and documents and any other procedural requirements.
3. That a *rule nisi* be issued with immediate and interim effect, calling upon the respondent to show cause on a date to be appointed by the above Honourable Court, why an order in the following terms should not be made final.
 - 3.1. That the respondent be interdicted and restrained from engaging in any anti- union conduct calculated to cause dismissal, intimidate, harass or frighten employees from freely joining and be a member of a trade union of their own choosing and

participate in lawful activities of the union for the promotion and protection of the interests of the workers.

3.2. Declaring the disciplinary hearing unfair and unlawful and therefore a nullity.

3.3. Interdicting and setting aside the disciplinary hearing pending determination and finalization of this Application before the Honourable Court.

3.4. That prayer 3.1 and 3.3 operate with immediate and interim effect.

4. Ordering the respondent to pay cost of this Application.

5. Granting further and/or alternative relief as this court may deem appropriate."

The respondent raised preliminary points and the court made a ruling on these on 02.12.08. In its ruling prayers 3.2 and 3.3 were dismissed. The parties thereafter argued the matter on the merits and the court is now only concerned with prayer 3.1 of the notice of motion.

[3] It was argued on behalf of the applicants that the respondent was engaged in anti-union conduct and they are therefore asking the court to interdict the respondent. The respondent is denying that it is involved in anti-union conduct at the work place. It was argued that the respondent's management was merely involved in day to day management duties including effecting transfers and disciplining of the employees.

[4] In paragraphs 5 to 7.7 of the founding affidavit, the applicants are complaining about conduct of the respondent that took place during the month of June 2008. During that period the applicants' union, Swaziland Manufacturing and Allied Workers Union (SMAWU) had not yet been granted recognition by the respondent. The union has however since been granted recognition by the respondent. Part of prayer 3.1 therefore that the respondent be interdicted and restrained from engaging in any anti-union conduct calculated to cause dismissal, intimidate harass or

frighten employees from freely joining and be members
of a trade union has now been overtaken by events.

[5] The second part of prayer 3.1 is asking the court to interdict the respondent from conduct aimed at preventing the applicants from freely participating in lawful activities of the union. In support of this part of the prayer the deponent of the founding affidavit stated in paragraph 21 that the respondent warned the employees at the workplace to vote against the proposed strike action or face dismissal.

[6] On behalf of the respondent it was argued that the respondent was warning the staff not to vote for the proposed strike action because it was illegal. It was argued on behalf of the respondent that the proposed strike action was illegal because the issue that led to the deadlock in the negotiations between the parties at CMAC was not the one reported as the dispute between the parties. The report of the dispute was annexed in the respondent's answering affidavit and marked "BM1".

[7] In paragraph 5.1 of annexure "BM1" the nature of the dispute is stated to be wage negotiations. The parties reached a deadlock because the applicants' union did not want a certain Brazil Mfumo to be part

of the respondent's negotiation team. The applicants union did not want to negotiate as long as Brazil Mfumo was present. The CMAC Commissioner then declared a deadlock. In the end therefore the deadlock was declared not because the parties had failed to reach an agreement on the issue reported as a dispute between the parties, to wit, wages, but was declared because the union did not want Brazil Mfumo to be part of the respondent's negotiation team.

[8] In paragraph 26 of the founding affidavit however the deponent states that the workers did take part in the voting process. The workers therefore did participate in a lawful union activity, that of voting for or against the strike.

[9] The court is alive to the provisions of Section 100(1) of the Industrial Relations Act, No.1 of 2000 (as amended). In that section the Act lists a number of prohibited employer practices. One of these is that an employer is prohibited from threatening an employee from exercising any right conferred by this Act.

The respondent denies that it threatened any employee. There is therefore clearly a dispute of fact on this issue. There is however no

useful purpose that will be served by the court referring this matter to oral evidence. The workers did in fact exercise their right to vote in favour of the strike action. The respondent thereafter filed an urgent application under case No.593/08 in a bid to stop the strike action.

[10] One of the orders prayed for by the respondent was an order that the applicants be interdicted from instituting the intended strike action. A rule nisi was granted by the court. This rule was confirmed by the court by consent on 16.12.08.

11. The applicants having consented to the confirmation of the rule nisi to the effect that they be interdicted from continuing with the strike action, any order that the court may now make will be academic.

1. The application is accordingly dismissed. There is no order as to costs.

11. The members agree.

A handwritten signature in black ink, consisting of a large, stylized 'N' followed by several vertical strokes and a long horizontal line extending to the right.

**NKOSINATHI NKONYANE
JUDGE OF THE INDUSTRIAL COURT**