



**IN THE INDUSTRIAL COURT OF ESWATINI**

**JUDGMENT**

Case No. 65/19

In the matter between:

**SWAZILAND MANUFACTURING AND**

**ALLIED WORKERS UNION**

Applicant

And

**POLYCARP STEWART**

1<sup>st</sup> Respondent

**SHADRACH MASUKU**

2<sup>nd</sup> Respondent

**JUSTICE THINTITHA MTSETFWA**

3<sup>rd</sup> Respondent

**ROSE HADZEBE**

4<sup>th</sup> Respondent

**FAITH MSIBI**

5<sup>th</sup> Respondent

**Neutral citation:** Swaziland Manufacturing and Allied Workers Union v Polycarp Stewart & 4 Others (65/2019) [2019] SZIC 58 (04 July 2018)

**Coram:** **NSIBANDE S. JP**

(Sitting with Nominated Members of the Court Mr N. Manana and Mr. M. Dlamini)

**Heard:** 08 April 2019

**Delivered:** 04 July 2019

**Summary:** *Urgent - Application to interdict Respondents from unlawfully interfering with Applicant's right to represent employers. Point in limine on urgency raised – Applicant failing to explicitly comply with Rule 15(2) of the Rules of Court – application dismissed on point of law.*

### **JUDGMENT**

[1] The Applicant, a trade union duly registered in terms of the **Industrial Relations Act 2000 (as amended)**, approached the Court on a certificate of urgency seeking an order in the following terms:

1. *Dispensing with the normal and usual time limits relating to manner of service, and filing of papers and hearing thereof and that the matter be heard as one of urgency in terms of the Rules of the above Honourable Court.*
2. *Interdicting and restraining the first to fifth Respondents from unlawfully interfering with the Applicant's work in respect of union-employer bargaining relationship in any and all work places where the Applicant is a recognised trade union.*

3. *Interdicting and restraining the Respondents from misrepresenting to employers who have recognition agreements with Applicant that they (respondents) are the people or faction who have a right to collectively bargain and negotiate with employers for and on behalf of SMAWU Members.*
4. *Costs of this application to be paid by any of the Respondents who will oppose this application at a punitive scale.*
5. *Further and/or alternatively relief.”*

[2] The Respondents all raised the same points *in limine* at the hearing and it is with regard to those points that this judgment is concerned:-

1. Urgency - The Respondents submitted that, by the Applicant's own admission, employers in the industry became aware of the two factions of SMAWU in December 2018 and in all probability Employees advised the Applicant of their confusion regarding which faction to deal with, in December 2018, yet the application was brought to Court in March 2019 without any explanation of the delays. The first Respondent further submitted that Applicant dismissally failed to set forth explicitly, the

circumstances and reasons which render the matter urgent; the reasons why the provisions of the Part VIII of the Act should be waived; and the reasons why the Applicant cannot be afforded substantial redress at a hearing in due course, as required by **Rule 15 of the Rules of Court**.

- [3] **Rule 15 reads** – (1) *“A party that applies for urgent relief shall file an application that so far as possible complies with the requirements of Rule (14).*
- (2) *The affidavit in support of the application shall set forth explicitly –*
- (a) *the circumstances and reasons which render the matter urgent;*
  - (b) *the reasons why the provisions of Part VIII of the Act should be waived;*
- and*
- (c) *the reasons why the Applicant cannot be afforded substantial relief at a hearing in due course.*

- [4] In addressing why the matter should be enrolled and heard as one of urgency, the Applicant makes no specific averments why the provisions of Part VIII of the Act should be waived (other than to say CMAC cannot grant interdicts) and nor does it set out the reasons why it can not be afforded relief at a hearing in due course. There is no indication for example, why an application in terms of **Rule 14** could not assist Applicant.

[5] This Court has consistently said that the provisions of **Rule 15(2)** of the **Rules of this Court** are peremptory in nature and that an Applicant who fails to make the necessary averments in his/her founding affidavit stands to have his application dismissed for lack thereof.

(See in this regard **Dr Zebenguni Mkhathshwa and Others v Swaziland Government and The Attorney General IC Case No. 433/2017**).

[6] In the circumstances we uphold the point *in limine* and dismiss the application. It is not necessary to consider the other points raised. We make no order as to costs.

The members agree.

  
S. NSIBANDE

**PRESIDENT OF THE INDUSTRIAL COURT**

**For the Applicant:**

Mr. Wonder Mkhonza

**For 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents:**

Mr. Alex Fakudze

**2<sup>nd</sup> Respondent:**

In Person

