



**CONCILIATION, MEDIATION AND ARBITRATION COMMISSION
(CMAC)**

HELD AT MANZINI

MNZ 527/07

In the arbitration matter between:-

SIKHUMBUZO SIKHONDZE

Applicant

and

MAC'S FARM

Respondent

ARBITRATION AWARD

DATE OF ARBITRATION: 2nd May 2008, 16th May 2008, 18th July
2008 and 16th December 2008

VENUE: CMAC OFFICES, MANZINI

CORAM:

Arbitrator : Commissioner M.B. Mkhonta

For Applicant : Mr. Maxwell Nkambule (Applicant's Representative)

For Respondent: Ms. Stukie Motsa (Respondent's Representative)

1. PARTIES AND HEARING:

The Applicant in this matter is Mr. Sikhumbuzo Sikhondze of P.O. Box 172, Sidvokodvo, hereinafter referred as the Applicant or as the employee.

The Respondent is Mac's Farm of P.O. Box 1213, Manzini, hereinafter referred as the Respondent, or the employer.

2. REPRESENTATION

The Applicant was represented by Mr. Maxwell Nkambule. The Respondent was represented by Ms Stukie Motsa.

3. ISSUES IN DISPUTE

Applicant submitted that Respondent dismissed him unfairly both procedurally and substantively on the 20th March 2007. Applicant claimed notice pay, severance, additional notice and twelve (12) months compensation for unfair dismissal.

On the other hand, Respondent submitted that Applicant was fairly dismissed following a fair procedure and that he was not due any of the payments as claimed.

4. BACKGROUND INFORMATION

The background information to this dispute is that Applicant was employed as a Labourer in May 1998 at Respondents undertaking earning E603.44/month. Applicant remained in continuous employment at Mac's Farm until his services were terminated on 20th March 2007. Applicant submitted that he dismissed unfair both procedurally and

substantively in that the same people set for the disciplinary hearing as well as the appeal hearing, that he was verbally told that his appeal will not succeed and that the charges put to him were never proven at the disciplinary hearing. In addition, Applicant averred that following attempts to engage Respondent on the dismissal decision he was not successful thus he resolved to submit a dispute on unfair dismissal against Respondent.

Respondent disagreed with Applicant and highlighted that dismissal decision was fair and that it was taken after a disciplinary hearing which was followed by an appeal process, that all the charges that were put to the employee were proven at the disciplinary hearing and that no procedural defect could be attributed to the process as all procedural requirements were followed to the letter. Respondent also pointed out that dismissal decision was appropriate taking into consideration the nature of the misconducts and the employee's personal circumstances.

The dispute was conciliated by CMAC and a Certificate of Unresolved Dispute No: 092/08 was issued by CMAC. Both parties then consented to arbitration on the 29th November 2007 and I was appointed Arbitrator in April 2008.

5. ANALYSIS OF EVIDENCE AND ARGUMENTS

During the arbitration proceedings, it became clear that the parties wished to once again explore the possibilities of mutually settling this dispute. With the consent of the parties, the Arbitrator then undertook a process of 'conciliation within the arbitration'.

Various settlement options suggested by the Respondent were discussed between the parties and a full and final settlement agreement wherein the Respondent would pay the Applicant an amount of E2, 413.76 was finally agreed to by the Applicant.

6. CONCLUSION

In view of the acceptance of the settlement offer by the Applicant, a Memorandum of Agreement dated 16th December 2008 (copy attached) was then entered into by the parties, which signalled that the dispute had been successfully resolved by mutual consent. The terms of the agreement were: -

- a) That the Respondent will pay Applicant the amount of E2, 413.76;
- b) That this payment is in full and final settlement of the dispute Applicant has with the Respondent and Applicant confirms that he will no longer have any dispute with Mac's Farm whatsoever, arising from his employment to Mac's Farm; and
- a) That payment by Mac's Farm will be made in two (2) equal installments effective December 2008 and payable to CMAC Manzini.

7. AWARD

Based on the Memorandum of Agreement and in terms of the details of the report of dispute, I hereby make the following award: -

- a) That the Respondent is ordered to pay Applicant the amount of E2, 413.76;

- b) That this payment is in full and final settlement of the dispute Applicant has with the Respondent and Applicant confirms that he will no longer have any dispute with Mac's Farm whatsoever, arising from his employment to Mac's Farm; and
- c) That payment by Mac's Farm will be made in two (2) equal installments effective December 2008 and payable to CMAC Manzini.

DATED AT MANZINI ON THIS 16th DAY JANUARY 2009.

MAX B. MKHONTA
CAMC ARBITRATOR