

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 559/06

In the matter between:

ZANELE MAGAGULA & ANOTHER

Applicant

and

**JOMAR INVESTMENTS (PTY) LTD
t/a SHAMROCK BUTCHERY**

Respondent

CORAM:

P. R. DUNSEITH: PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

FOR APPLICANT: S. DLAMINI

FOR RESPONDENT: NO APPEARANCE

J U D G E M E N T - 12/02/06

1. The Applicants have applied for their unresolved labour dispute with the Respondent to be referred to compulsory arbitration under the auspices of the Commission for Mediation, Arbitration and Conciliation ("CMAC") in terms of the powers vested in the President of the Industrial Court under section 8(8) of the Industrial Relations Act 2000 (as amended).

2. The Respondent filed notice of intention to oppose the application, but did not file

any written reasons for opposition, nor did the Respondent's representative appear at the hearing of the application to orally motivate its opposition.

3. In their application for determination of the unresolved dispute, the Applicants aver that their wages were underpaid during the period of their employment, and they were subsequently dismissed without any fair reason. They are claiming backpay, terminal benefits, and compensation for unfair dismissal.

4. In its Reply, the Respondent avers that the Applicants were casual employees who worked less than 20 hours per week. Consequently they are not employees to whom section 35 of the Employment Act 1980 (as amended) applies and the Respondent is not required by law to furnish fair reasons for the termination of their services. Further, the alleged underpayment of wages is denied.

5. The main issue for adjudication is whether the Applicants were employees to whom section 35 of the Act applied. This issue does not involve any complex question of law and is capable of speedy determination.

6. Although the amounts claimed by the Applicants are not insubstantial, I am of the view that this alone is not a ground which disqualifies the matter from being referred to arbitration. Looking at the nature of the case, I am satisfied that the Respondent will not be unduly disadvantaged by the less formal procedures of arbitration or the comparatively lower standard of judicial process and reasoning available at arbitration under the auspices of CMAC.

7. In the premises, I direct that the main application be and is hereby referred to arbitration under the auspices of CMAC. I direct further that the Applicant shall forward a copy of this ruling, together with copies of the pleadings filed of record, to CMAC within 14 days.

**PETER R. DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT**