

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO.

521/06

In the matter between:

N KAN DO NDWANDWE

Applicant

and

VUKA SIDWASHINI FARMERS ASSOCIATION

Respondent

CORAM:

P. R. DUNSEITH: PRESIDENT

JOSIAH YENDE: MEMBER

NICHOLAS MANANA: MEMBER

S. D LAM IN I: FOR APPLICANT

S. HLOPHE: FOR RESPONDENT

RULING ON APPLICATION FOR REFERRAL TO ARBITRATION

8/2/07

1. The Applicant has applied for this matter to be referred to compulsory arbitration in terms of the discretion vested in the President of the Industrial Court under section 8 (8) of the industrial Relations Act 2000 (as amended).

2. The Respondent opposes the application on the following grounds:

2.1 The Applicant claims that he was dismissed, and the dismissal was automatically unfair. This is a serious allegation involving issues of unlawful discrimination and exposing the Respondent to penal damages over and above the normal compensation for unfair dismissal,

2.2 Material disputes of fact and law arise on the pleadings and these disputes should be resolved in the formal structures of a court trial.

2.3 The outcome of the trial may turn on decisions of facts. No appeal from the decisions of the arbitrator lies on questions of fact.

2.4 The Respondent has no control over the selection of the arbitrator. In terms of section 66 (1) of the Industrial Relations Act, the only prescribed qualification of a Commissioner is that he is "competent". The Respondent has no way of ensuring that the selected arbitrator has the professional qualifications and experience required for the just decision of this particular matter.

2.5 The amount claimed is substantial for a farmers association such as the Respondent.

3. The Applicant's representative insisted that the issues arising for trial are simple and limited in scope. On a perusal of the pleadings, I do not agree. Whether the Applicant was a permanent or seasonal employee; whether he was dismissed; whether the Respondent was influenced by a letter written by the local Umphakatsi; whether the facts support a finding of automatically unfair dismissal - these questions are sufficiently complex to require judicial consideration.

4. On applying the principles spelled out in the cases of **Sydney Mkhabela v Maxi Prest Tyres (IC Case No. 29/2005)** and **Zodwa Gamedze v Swaziland Hospice at Home (IC Case No. 252/2002)** I am not satisfied that this is the kind of matter where the Respondent should be compelled to submit to arbitration against its will.

5. The application for referral is dismissed. There shall be no order as to costs.

P.R. DUNSEITH

PRESIDENT OF THE INDUSTRIAL COURT