

# IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 676/2006

In the matter between:

**MANGALISO NKAMBULE**

**APPLICANT**

and

**FORTIS ENTERPRISE LTD T/A LANGA  
NATIONAL BRICKWORKS**

**RESPONDENT**

**CORAM:**

**o. NSIBANDE JOSIAH YENDE  
NICHOLAS MANANA**

**PRESIDENT  
MEMBER  
MEMBER**

**MR. PILISO MR.  
SIBANDZE**

**FOR APPLICANT FOR  
RESPONDENT**

## **RULING -19/06/2009**

1. The Applicant has applied for an order that the President of the Court refers his unresolved dispute to CMAC for arbitration in terms of the powers vested in him by section 85 (2) of the Industrial Relations Act 2000 (as amended).
2. The Respondent opposes the application and has raised a point *in limine* namely that the application is not properly before the court in that Applicant has failed to meet the requirements of Rule 14 (1) of the **Industrial Court Rules** 2007 because the application is not supported by an affidavit nor has the Applicant complied with Rule 14 (4) and (5).
3. Rule 14 (1) reads "*Where a material dispute of fact is not reasonably foreseen, a party may institute an application by way of notice of motion supported by affidavit.*"

Rule 14 (4) sets out what the notice should contain while Rule 14 (5) sets out what the affidavit should clearly and concisely set out.

4. Applicant submits that the application is brought in terms of Rule 18 of the **Industrial Court Rules** which deals specifically with applications for referral to arbitration. RUIP 18 (2) states only that *"the application shall be made on notice to all other parties, stating the reasons for the referral."* Applicant submits he is not enjoined to bring the application on affidavit and that having given notice of the application to the Respondent, the application is properly before the court.

5. The interpretation section of the **Industrial Court Rules** 2007 provides that *"application" means an application or reference made to the court for the determination or settlement of any issue or dispute, or for any order or injunction which the court may lawfully make*".

6. The Applicant seeks an order referring the matter to arbitration which is an order that this court may lawfully make. Rule 18 (2) directs a party who wishes to make such an application to do so on notice to other parties and to state the reasons for the referral sought. It does not in our view exempt the Applicant from bringing the application on affidavit as required by Rule 14. In my view, where a party brings an application for referral he is instituting an application for an order that this court may lawfully make and must therefore comply with Rule 14 in its entirety. The Applicant in this matter has instituted an application for the matter to be referred to arbitration. Such application ought to be supported by affidavit.

7. In the circumstances the point raised *in limine* is upheld and the application is dismissed. There will be no order as to costs.

S NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT