

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 202/09

In the matter between:

PHINDILE L. SIMELANE

Applicant

and

FEDICS SERVICES (PTY) LTD

Respondent

CORAM:

S. NSIBANDE JOSIAH YENDE

PRESIDENT

NICHOLAS MANANA

MEMBER

MEMBER

MR. B. TFWALA

FOR APPLICANT FOR

MS. L. MNGOMEZULU

RESPONDENT

RULING ON APPLICATION FOR REFERALL TO ARBITRATION

13th JULY 2009

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 oppose the application on the following grounds:
 - 2.1 The Applicant claims she was retrenched and that such retrenchment was unlawful because the Respondent did not comply with the provisions of section 40 (a) to (f) of the Employment Act 1980. This issue will turn on questions of fact. No appeal lies on questions of facts from the decision of

arbitrators.

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

2.3 The amount claimed is substantial.

3. The Applicant's representative insisted that the issues arising for trial are simple and that the Conciliation Mediation and Arbitration Commission was competent to deal with them. On perusal of the papers before court I do not agree. As stated in **Sydney Mkhabela v Maxiprest Tyres I.C. Case No. 29/2005**; in cases involving dismissal, the question as to whether a person has been unfairly dismissed or should be reinstated to his employment will in most cases be regarded as a serious matter of grave consequence to both parties requiring a relatively formal procedure best suited to a court of law. The same is true where a party claims he was unfairly and unlawfully retrenched. Whether there was compliance with section 40 of the Employment Act is a sufficiently complex question to required judicial consideration.
4. For the above reasons, the application to refer the matter to arbitration is refused. There is no order as to costs.

S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT