

**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 96/09**

In the matter between:

**SIHLE M. NDLANGAMANDLA**

**Applicant**

and

**SWAZILAND PERISHABLE FOOD t/a  
THANDIES FRESH FOODS**

**Respondent**

**CORAM:**

**S. NSIBANDE JOSIAH**

**PRESIDENT**

**YENDE NICHOLAS**

**MEMBER**

**MANANA**

**MEMBER**

**MR. L. MZIZI**

**FOR APPLICANT**

**MR. T.**

**FOR**

**MAVUSO**

**RESPONDENT**

**J U D G E M E N T - 21/09/09**

1. The Applicant has applied to the President of the Industrial Court that

his pending application for determination of an unresolved dispute against the Respondent be referred to arbitration under the auspices of the Conciliation Mediation & Arbitration Commission (CMAC) in terms of Section 85 (2) of the Industrial Relations Act 2000 as amended.

2. The Respondent opposes the application and submits that it prefers that the matter be adjudicated upon by the Industrial Court because the issues arising out of the facts of the matter are complex and also because of the amount claimed by the Applicant is substantial.
3. In his main application, the Applicant alleges that he was dismissed for dishonesty and attempted fraud on the Respondent, and that his dismissal was both substantively and procedurally unfair. He claims for Notice Pay, payment of arrear salary which was unpaid while he was on suspension and compensation for unfair dismissal.
4. Numerous legal and factual issues arise from the pleadings including whether Applicant was guilty of committing fraud.
  - whether the Applicant's suspension without pay between 31<sup>st</sup> January 2008 and 29<sup>th</sup> July 2008 was lawful.
  - whether Applicant took up employment with another entity in the 2<sup>nd</sup> month of his suspension.
  - what the legal effect of his taking up new employment (if he did) while still suspended by Respondent is.
  - whether the Applicant was subjected to a fair disciplinary process, which he chose to abandon.
5. While I do consider that these factual and legal issues are particularly complex to require judicial consideration, the Applicant's claim is also substantial and an adverse outcome would have grave consequences for the Respondent's business. The right to appeal (on questions of law only) as provided by the Industrial Relations Act would not effectively cure any defects in procedure or findings of fact.
6. I am not persuaded that this is a matter where the Respondent should be compelled to submit to arbitration against its will. In the circumstances the application will be dismissed with no order as to costs.



**S. NSIBANDE**

**PRESIDENT OF THE INDUSTRIAL COURT**