

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 318/09

In the matter between:

VUYISILE SIMELANE

Applicant

and

STARLIGHT RESTAURANT

Respondent

CORAM:

S. NSIBANDE JOSIAH YENDE

PRESIDENT

NICHOLAS MANANA

MEMBER

MEMBER

MR. C. MOTSA

FOR APPLICANT

NO APPEARANCE FOR RESPONDENT

J U D G E M E N T - 23/09/09

The Applicant has applied for this matter to be referred to compulsory arbitration under the auspices of CMAC in terms of the discretion vested in the President of the Industrial Court in terms of Section 85 (2) (a) of the Industrial Relations Act 2000 (as amended).

In the application, the Applicant states that the matter should be referred to CMAC for arbitration because the issues arising for trial are not complex, are simple and can be easily and effectively handled by an arbitrator. Further that

the claim for E16,200.00 is not substantial.

In her application for determination of an unresolved dispute, the Applicant states that she was dismissed on 22nd March 2009 when she refused to sign a 30 day contract which was being imposed by the Respondent. She considered her dismissal to have been both procedurally and substantively unfair.

The Respondent, in its reply denies dismissing the Applicant. It alleges that the contract it introduced on 22nd March 2009 was merely meant to formalize the existing conditions of service under which the Applicant and other employees were serving. It alleges that the Applicant and other employees were not permanent employees. It further alleges that Applicant was never dismissed but left work stating that she would consult on the contract but never returned except to demand E16,200.00.

The application for the matter to be referred to arbitration was not opposed by the Respondent despite that it was served on its attorney of record. Nevertheless it is my duty to exercise judiciously the discretion endowed on me by the Industrial Relations Act in matters of this nature, unless there is an express consent for the matter to be referred to arbitration. To do so I must peruse the full set of pleadings filed in the main matter.

In this matter the pleadings reveal a number of factual and legal disputes; whether the Applicant was originally employed on a monthly and non-permanent contract; the legal effect of introducing monthly contracts, if they were being introduced; whether the Applicant was in fact dismissed.

7. I do not consider that the factual issues raised herein are particularly complex nor are the legal issues, in my view. I do, however, consider that the claim is substantial for the kind of undertaking Respondent operates, being a restaurant at Malkerns Sentra. I am reluctant to compel a party to submit to arbitration where the claim is substantial where there is no express submission to arbitration.

8. For the above reason, the application for referral is refused. The matter is referred to the Registrar for allocation of trial dates.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT