

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 486/09

In the matter between:

SICELO REQUEST BHEMBE

Applicant

And

VIP PROTECTION SERVICES (PTY) LTD

Respondent

CORAM:

S. NSIBANDE J. YENDE N.

MEMBER

MANANA

MEMBER

PRESIDENT

**MR. MABUZA MS.
MKOKO**

**FOR APPLICANT FOR
RESPONDENT**

RULING ON APPLICATION FOR REFERRAL TO ARBITRATION

8/12/09

1. The Applicant has applied to the President of the Industrial Court for an order that his pending dispute against the Respondent be referred to arbitration under the auspices of CMAC in terms of Section 8 (8) of the Industrial Relations Act 2000 (as amended).
2. The Applicant states that the matter should be referred to arbitration because:
 5. He has a life threatening sickness which might overcome him before trial;
6. The Court is heavily packed with many cases.

3. The Respondent opposes the Application and states that the matter ought to be heard and determined in Court because:
 7. the amount sought is over E20.000 and is a substantial claim.
 8. the issues for determination are complex and legalistic because issues of gross negligence and gross insubordination are at the centre of the dispute.
 9. the parties have no say at CMAC regarding the arbitrator hence it is possible that these legalistic issues could be placed before a non-lawyer arbitrator who may fail to grasp the issues and thus fail to fairly and correctly determine them.
4. The fact that the Applicant suffers from a life-threatening illness (tuberculosis) is not a ground for referring a matter to arbitration. The disease is not only curable but is also treated for free by the Government of Swaziland. The Applicant would be best advised to take advantage of such treatment.
10. Although the Applicant's claim is not substantial in my view, regard being had to the Respondent's undertaking, his claim is that his dismissal was both substantively and procedurally unfair. Referring to the ruling of the Court President in the case of **Sydney Mkhabela v Maxi Prest Tyres (IC Case No. 29/2005)**. Ms. Mkofo for Respondent set out that the question whether a person has been unfairly dismissed and/or should be reinstated in his employment will in most cases be regarded as a matter of grave consequence to both parties, requiring the relatively more formal procedure of a court of law.
11. The potential prejudice of a referral to arbitration arises from one of the parties being deprived against its will from access to a court of law for determination of the dispute. The President will be reluctant to close the doors of the Industrial Court to a litigant unless he is satisfied that the litigant will not be unduly disadvantaged by the less formal procedure of arbitration, or the comparatively lower standard of judicial process and reasoning available at arbitration under the auspices of CMAC.

Dunseith J.P. in **Zodwa Gamedze v Swaziland Hospice at Home (IC Case No. 252/05)**.

7. I am not convinced that this matter should be referred to arbitration. There are, in my view complexities of law and fact which require adjudication by a court of law more so since the right of appeal is only with regard to questions of law only. Any adverse finding of fact or procedure cannot be cured effectively at all on appeal.
8. In the premises the application for referral is dismissed.

There is no order as to costs.

A handwritten signature in black ink, appearing to read 'Nsibande', written in a cursive style.

S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT