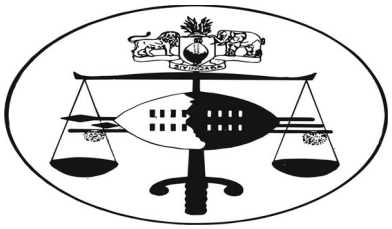

IN THE INDUSTRIAL COURT OF SWAZILAND

JUDGMENT

Held at Mbabane Case No.240/14

In the matter between:

BHEKI MAGAGULA **Applicant**

And

RMCE CONSTRUCTION **Respondent**

Neutral citation: *Bheki Magagulas* v *RMCE Construction, (240/14) [2014] SZIC 55* (DECEMBER 12 2014**)**

Coram: NKONYANE J,
(Sitting with G. Ndzinisa & S. Mvubu Nominated Members of the Court)

Heard: **05 December 2014**

Delivered: **12 December 2014**

Summary---The Applicant instituted an application for determination of an unresolved dispute against his employer. After the filing of the Reply by the employer, the Applicant then applied that the dispute be referred to arbitration under the auspices of CMAC.

Held---As the dispute does not involve the determination of complex legal issues, the matter indeed lends itself to determination by the more flexible and simple process of arbitration. Application accordingly granted.

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JUDGEMENT

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1. This is an application for referral of the pending labour dispute for arbitration under the auspices of the Conciliation Mediation and Arbitration Commission ("CMAC") in terms of Section 85(2) (a) of the Industrial Relations Acts No.1of 2000 as amended.

2. The Respondent filed a notice to oppose the Application which was filed in Court on 13.10.2014. No further papers were filed by the parties.

3. When the matter appeared before this court on 15.10.2014, the Applicant's representative informed the court that he was advised, when the matter appeared in Court A that he should file an application in terms of Section 85(2) or Rule 18 (5) of this Court's Rules. On this day the

Respondent was represented by a certain Ms S. Simelane. The matter was postponed until 21.10.14. On this day the Respondent filed its Reply.

4. The Applicant on 23.10.2014, filed the present application for referral to arbitration in terms of Section 85 of the Industrial Relations Act of 2000 as amended as read together with Rule 18 of this Court's Rules.

5. In the initial application for referral by the Applicant dated 23.09.2014 which was set down before the court on 15.10.2014, the Respondent filed a notice to oppose dated 13.10.2014and argued in its paragraph 3 thereof that;

> *"3. The Applicant did not explicitly state the reasons for the referral in his application as per the Rule 18(2) of the Industrial Court Rule 2007. Rule 18(2) of the Industrial Court Rules states that:-*
>
> *'The application shall be made on notice to all other parties, explicit stating the reasons for the referral.'"*

6. Indeed, in the application set down before the Court on 15.10.2014 the Applicant had not stated the reasons or filed any affidavit in support of the application.

7. The present application however is now in line with the provisions of Rule 18(2) in that the Applicant has explicitly stated the reasons for the referral in the founding affidavit which is attached to the application.

8. The Respondent was served with the application on 27.10.2014. The matter appeared in court on 31.10.2014. There was no appearance for the Respondent on this day. The Court refused to grant the order, but directed the Applicant's representative to file another Notice of Set Down stating the reasons for the Set Down. The Applicant's representative complied with the Court's directive, and the matter was set down for 05.12.2014. Again, there was no appearance for the Respondent. There being proof that the Respondent was served, the Court allowed the Applicant's representative to proceed with the application.

9. It was argued on behalf of the Applicant that;

   9.1 The issues involved in the matter are not complex so as to require the Court to be involved.

   9.2 The issue for determination is whether the applicant was fairly dismissed or not.

   9.3 The Respondent has no bona fide defence.

9.4 The amount claimed is not substantial, it being the sum of E11,700.00

9.5 If the matter proceeds on trial in Court, the amount of costs that the Applicant will incur may exceed the amount claimed herein. The Applicant is not yet employed and cannot afford the legal fees for a full blown trial.

10. Having heard the submissions on behalf of the Applicant and also taking into account the pleadings before the court, I come to the conclusion that;

10.1 The factual issues involved in this application are not particularly complex.

10.2 The legal question that is involved is also not difficult so as to require a very high degree of analytical process.

10.3 The Applicant's claim is not substantial. I therefore do not consider that there will be any substantial and real prejudice to be suffered by the Respondent by granting the application that the matter be referred to arbitration.

10.4 matters referred to arbitration are resolved more cheaply and swiftly, whereas a party can wait for more than a year to have his day in court because of the backlog of cases.

(see :- Xolile Matsenjwa Vs Manser Import and Export (PTY) LTD t/a Manzini Waste Centre. Case No.277/2008 (IC).)

11. Taking into account all the foregoing observations and also all the circumstances of this case, I will make the following order;

a) The matter be and is hereby referred to arbitration under the auspices of CMAC in terms of Section 85 (2) (a) of the Industrial Court Act No.1 of 2000 (as amended) as read with Rule 18 of the Industrial Court's Rules.

b) There is no order as to costs.

N. NKONYANE
ACTING JUDGE PRESIDENT OF THE INDUSTRIAL COURT.

For Applicant: Mr Nhleko

For Respondent: Mr S. Simelane