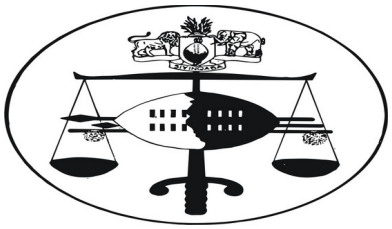

IN THE INDUSTRIAL COURT OF SWAZILAND

RULING

Held at Mbabane Case No.67/13
In the matter between:

BONGANI SIBIYA **Applicant**

And

EAGLE EYE SECURITY SERVICES **Respondent**

Neutral citation: *Bongani Sibiya* v *Eagle Eye Security (67/13) SZIC 10 (March 13 2015)*

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

Heard submissions: 06.03.15

Delivered ruling: 13.03.15

Summary : The Applicant brought an application against the Respondent for unfair dismissal. After the Respondent had filed a Reply, the Applicant then filed the present application where he is applying that the unresolved dispute between the parties be referred to arbitration under the auspices of CMAC. The Respondent did not oppose the application.

Held---As the amount involved is minimal, and the factual issues in dispute are not complex, the matter does lends itself to determination by the flexible and simple process of arbitration. Application for referral accordingly granted.

RULING

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1. The Applicant is Bongani Sibiya, an adult Swazi male of Gelekeceni, Ezulwini area in the Hhohho District.

2. The Respondent is Manthu Investment trading as Eagle Eye Security Services, a security company duly registered in terms of the company laws of the Kingdom of Swaziland.

3. The Applicant was employed by the Respondent on 01st April 2012 as a Post Supervisor. The Applicant remained in the continuous employ of the Respondent until 03rd October 2012 when his service was terminated by the Respondent.

4. At the time of his dismissal the Applicant was earning a gross salary of E1, 538.00 per month. The Applicant was not satisfied with the manner

of his dismissal. He accordingly reported a dispute with CMAC. The dispute could not be resolved at CMAC. A certificate of unresolved dispute was accordingly issued by the CMAC Commissioner. The Applicant thereafter launched an application for the determination of the unresolved dispute in this court. The Applicant's application is opposed by the Respondent on whose behalf a Reply was filed dated 18th March 2013. The matter was thereafter referred to the Registrar's office for allocation of trial dates.

5. The Applicant has now filed an application that the matter be referred to arbitration under the auspices of CMAC as provided by Section 8 (8) as read with Section 85 (2) of the Industrial Relations Act of 2000 as amended.

6. The Respondent has not filed any papers in opposition thereto, despite having been served with the Notice of Motion. The court also acting *ex abudanti cautela*, directed the Applicant to serve and file a Notice of Set Down on the Respondent stating therein that the matter was being set down in court for the purpose of moving the application for referral to arbitration. The Applicant duly complied. Even after the service of the Notice of Set Down, the Respondent did not file any papers in opposition.

7. The application thereafter proceeded before the court as an opposed application. On behalf of the Applicant it was submitted that:

7.1 The amount claimed by the Applicant is not substantial, it being the sum of E21, 324.00 only.

7.2 The issues for determination are whether the dismissal was procedurally and substantively fair, and that the determination of these issues is not of a complex nature.

7.3 The Applicant's application is not opposed by the Respondent.

7.4 At CMAC the dispute will be expeditiously dealt with as there is no backlog of cases like in the Industrial Court.

7.5 Since the Applicant is still not yet employed, it will be beneficial to have the matter referred to arbitration under the auspices of CMAC as the procedure at CMAC is cost effect when taking into account the costs of formal litigation before the courts.

7.6 The Respondent will not suffer any prejudice.

8. Indeed, in terms of Section 8 (8) of the Industrial Relations Act, 2000 as amended it is provided that;

"Notwithstanding the provisions of Section 85 (2), the President of the Court may direct that any dispute referred to it in terms of this

or any other Act be determined by arbitration under the auspices of the commission."

The court dealing with a similar application in the case of **Mkhabela V Maxi-Prest Tyres, case No. 29/2005,** pointed out as follows in paragraph 17 thereof;

"The obvious advantages of having a dispute determined by arbitration under the auspices of CMAC include cheap and easy access to an independent and impartial adjudication process; simplicity of procedure; and an expeditious outcome. This may be contrasted with dispute determination by the Industrial Court that is often protracted and delayed, costly and legalistic."

9. In terms of the Industrial Relations Act, the President is expected to exercise his discretion whether or not to refer the dispute to arbitration. The discretion conferred on the President by the Act must be exercised judiciously taking into account the nature of the dispute, the amount claimed by the Applicant and the complexity of the issues for determination.

10. In the present application, the amount claimed by the Applicant is relatively small. The question for determination is not a complex one, and the application is not being opposed by the Respondent.

11. For the above reasons I have no doubt therefore that the Respondent will not suffer any prejudice if the dispute is referred to arbitration under the auspices of CMAC. The application is accordingly granted. There is no order as to costs as the application was not opposed by the Respondent.

N. NKONYANE
ACTING PRESIDENT OF THE NDUSTRIAL COURT OF SWAZILAND