



IN THE INDUSTRIAL COURT OF SWAZILAND

Case No. 194/17

In the matter between:

THULI MDZINISO

Applicant

And

T.C. RESTAURANT & PUB

Respondent

*Neutral citation: Thuli Mdziniso v T.C. Restaurant and Pub
(194/2017) [2017] SZIC 107 (October, 2017)*

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

Heard submissions 12/10/17

Delivered ruling 17/10/17

SUMMARY---Labour Law---Referral of dispute to arbitration---What factors must be taken into account---Complexity of the legal and factual issues involved---The total amount of the claim by the Applicant.

Held---There being no complex legal and factual issues raised, the dispute lends itself amenable to arbitration and it is accordingly referred to arbitration.

RULING ON APPLICATION FOR REFERRAL TO ARBITRATION
17.10.17

[1] The Applicant instituted an application for determination of an unresolved between herself and the Respondent.

[2] The Applicant was employed by the Respondent as a Cook on 01st October 2015. She remained in continuous employment until she was dismissed in November 2016. She regarded her dismissal as being unfair and unlawful. She therefore reported the matter to CMAC as a dispute. The dispute could not be

resolved by conciliation and a certificate of unresolved dispute was issued.

[3] The Applicant thereafter filed an application for determination of the dispute before this Court. Respondent is opposed to the application and it duly filed its Reply thereto. The matter was then referred to the Registrar's office for allocation of trial dates. No trial dates have been allocated yet. The Applicant has now filed the present application and is requesting that the dispute be referred to arbitration under the auspices of CMAC. The application was served on the Respondent's Attorneys on 27th September 2017. There is no answering affidavit in the Court record. It will be assumed therefore that the application for referral is not opposed.

[4] In accordance with **Rule 18 (2)** which requires the Applicant to explicitly state the reasons for the referral, the Applicant stated in her founding affidavit that;

“8. I am advised and verily believe that this is an appropriate matter to be referred back to CMAC for adjudication by means

of arbitration because the amount claimed is not substantial and there are no complex legal and/or factual issues in this matter, the issues for determination are simple and straight forward and that arbitration is an inexpensive and expeditious dispute resolution process.

9. *I have been advised that the Commission now has experience and suitably qualified Commissioners that can handle this matter as the issue(s) for determination is in the main straight forward.”*

[5] In terms of **Section 3** of the **Industrial Relations (Amendment) Act No. 3 of 2005**, the President of this Court is empowered to make a directive that a dispute be referred to arbitration. The Section provides as follows:-

“(8) 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.”

In exercising his discretion the President is expected to act judiciously and take into account the interests of justice and fairness. Having perused the pleadings in these proceedings I have come to the conclusion that indeed the issues for determination are not complex so as to require the robust and formal procedures of the Court.

[6] Furthermore, taking into account the amount of the claim involved, I come to the conclusion that the Respondent will not suffer any prejudice by diverting the dispute from the Court procedures and directing that it be dealt with by a CMAC appointed arbitrator.

[7] Taking into account all the foregoing factors, the circumstances of this case, the interests of justice and fairness, I will make the following order;

- a) The dispute is referred to arbitration under the auspices of
CMAC.
- b) There is no order as to costs.

A handwritten signature in black ink, consisting of a circular loop on the left and a series of connected strokes extending to the right.

N.NKONYANE

JUDGE OF THE INDUSTRIAL COURT OF SWAZILAND

FOR APPLICANT: MR. D. MABUZA
(LABOUR LAW CONSULTANT)

FOR RESPONDENT: NO APPEARANCE