



IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 118/2017

In the matter between:

JOYCE MATSENJWA

1st Applicant

THULILE DLAMINI

2nd Applicant

DUDU DLAMINI

3rd Applicant

And

PHENDUKANI INVESTMENTS (PTY) LTD

Respondent

Neutral citation: *Joyce Matsenjwa & Others v Phendukani Investments (PTY) Ltd (118/2017) [2017] SZIC 108 (October 18, 2017)*

Coram: N. Nkonyane J

(Sitting with G. Ndzinisa and S. Mvubu)

(Members of the Court)

Heard submissions:

12/10/2017

Delivered ruling:

18/10/2017

SUMMARY---Labour Law---Application for referral of a dispute to arbitration---Discretionary powers of the President of the Court---Factors to be taken into consideration---Simplicity or complexity of the legal and factual issues involved---Speedy and less expensive process of arbitration---Qualifications and experience of CMAC appointed arbitrators.

Held---The legal and factual issues for determination being not complex, the matter is referred to arbitration under the auspices of CMAC.

RULING ON APPLICATION FOR REFERRAL
TO ARBITRATION

1. The three Applicants are all female Swazi former employees of the Respondent.

2. The Respondent is a limited liability company duly incorporated and registered in terms of the Company Laws of the Kingdom of Swaziland carrying on its business at St. Philips area in the Lubombo District. The Respondent is involved in the business of Sugar Cane Production. The three Applicants were employed by the Respondent on different dates as Irrigators on seasonal basis.

3. The Applicants are claiming that the Respondent was not complying with the provisions of the **Regulation of Wages (Agricultural Industry) Order of 2015** during their tenure. They reported this matter to the Conciliation Mediation and Arbitration Commission (CMAC) as a dispute. The dispute could not be resolved by conciliation. A certificate of unresolved dispute was accordingly issued by the Commission. The Applicants thereafter instituted legal proceedings before this Court for the determination of the unresolved dispute. The Respondent opposed the application and filed its Reply. The Applicants filed their Replication thereto. The matter is presently awaiting allocation of trial dates by the Registrar's Office.

4. The Applicants have now filed the present application wherein they are requesting the President to an order that the dispute be referred to arbitration

under the auspices of CMAAC. This application is also opposed by the Respondent.

5. The Applicants' case :

On behalf of the Applicants it was argued that;

- 5.1 The Applicants are still unemployed and will be unable to cater for the huge costs of litigation if the matter were to be heard by the Court taking into account the formal nature and robust procedures of the Court.
- 5.2 Arbitration process is quicker than the Court process.
- 5.3 The amount claimed by each Applicant is not substantial. The combined claims of the Applicants amount to only E56,530.30
- 5.4 The issues for determination are not very complex so as to require the involvement of the Court.

6. On behalf of the respondent it was argued to the contrary that;

- 6.1 There is no guarantee that the matter would be resolved speedily at CMAAC.

- 6.2 The matter is complex and the Respondent fears that an arbitrator will not properly deal with the complicated facts.
- 6.3 There are complex legal issues which need to be determined by the Court.
- 6.4 The Legal issues involved would require the experience and expertise of Judge as opposed to an arbitrator.
- 6.5 The amount claimed is substantial for an ordinary farmers association.

7. Having read the pleadings and listened to the submissions, I have no hesitation in coming to the conclusion that the issue for determination is not a complex one. The issue for determination is whether the Respondent did fully comply with the provisions of the **Regulation of Wages (Agricultural Industry) Order of 2015** during the tenure of the Applicants' employment. Whether the Respondent did or did not comply with this Regulation of Wages is a simple question of fact which can be easily determined by an arbitrator. I therefore agree with the Applicants that there are no complex legal or factual questions for determination that arise from the dispute before the Court which would require that the matter be subjected to the rigorous and formalistic procedures of the Court.

8. A litigant is entitled to have his or her day in Court. The Industrial Relations Act has established alternative dispute resolution fora. There will therefore be no reason why any deserving matter should not be diverted from the rigorous Court procedures and be referred to these alternative dispute resolution fora where the dispute would be dealt with expeditiously and in a less expensive process.

9. In the present application, taking into account the nature of the dispute, the legal and factual issues arising therefrom, the total amount of the claim involved, I come to the conclusion that there will be no prejudice on the Respondent if the dispute is referred to arbitration.

10. Taking into account all the circumstances of this case, the interests of justice and fairness, I accordingly make the following order;
 - a) The dispute between the parties is referred to arbitration under the auspices of CMAA.
 - b) There is no order as to costs.

A handwritten signature in black ink, consisting of a circular initial 'N' followed by a stylized surname.

N.NKONYANE

JUDGE OF THE INDUSTRIAL COURT OF SWAZILAND

For Applicant:

Mr. V. Magagula

(Labour Law Consultant)

For Respondent:

No Appearance