



IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 337/16

In the matter between:

LINDA KUNENE

1st Applicant

DUMISANI JULUKA MAMBA

2nd Applicant

And

ASSELIPHILLIN PROTECTION SERVICES (PTY) LTD Respondent

Neutral citation: *Linda Kunene & Another v Asseliphillin Protection Services (PTY) LTD (337/16) [2017] SZIC 117 (October 27, 2017)*

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

Heard submissions 20/10/17

Delivered judgement: 27/10/17

SUMMARY---Labour Law---Application to have dispute referred to arbitration---Rule 18 of the Industrial Court's Rules---Discretionary powers of the President---Factors to be considered.

Held---Taking into account that the application is unopposed, the simplicity of the issues involved and the need for speedy resolution of industrial disputes the dispute deserves to be referred to arbitration.

**RULING ON APPLICATION
FOR REFERRAL TO ARBITRATION**

1. The 1st Applicant is an adult Swazi male person of Matsapha in the Manzini District.
2. The 2nd Applicant is an adult Swazi male person of Sithobelweni in the Lubombo District.
3. The Respondent is a limited liability company duly registered in terms of the Companies Law of the Kingdom of Swaziland having its principal place of business in Manzini.
4. The Applicants are employed by the Respondent as Security Guards and are based in Manzini. The Applicants claim that the Respondent is underpaying them in violation of the provisions of the Regulation of Wages Order that regulates the payment of salaries in the Security Industry in the country. The Applicants reported this conduct of the Respondent to the Conciliation,

Mediation and Arbitration Commission (CMAC). The dispute could not be resolved through conciliation and the Commission issued a certificate of unresolved dispute.

5. The Applicants thereafter instituted legal proceedings before this Court for the determination of the unresolved dispute between the parties.
6. From the Court record it appears that the Respondent did not file its Reply in opposition to the Applicant's application. The matter was therefore referred to the Registrar's Office for allocation of *ex parte* trial date on the basis that the application is unopposed on 3rd May 2017.
7. The Registrar has not yet allocated trial dates for the matter. The Applicants have now filed the current application in terms of **Rule 18** of the **Industrial Court's Rules** that the dispute be referred to arbitration under the auspices of CMAC.
8. The Applicants stated the reasons in support of the application in paragraphs 7-9 of the founding affidavit. They stated, *inter alia*, that;

8.1 The issues to be determined are not complex and can be dealt with by an arbitrator appointed by CMAC.

8.2 There are no questions of law that would need specific interpretation by this Court.

8.3 The amount claimed is not substantial.

8.4 CMAC is an impartial adjudicating authority which is cheap, easily accessible and having expeditious outcome from its simple procedures.

8.5 The Respondent would suffer no prejudice as the issues are crisp.

9. The Respondent did not file any answering affidavit. The averments in the Applicants' founding affidavits therefore remain unchallenged. I have also read the Applicants' papers filed of record. There is no doubt in my mind that indeed the dispute between the parties is not complicated so as to require that it be attended to by the Court when the **Industrial Relations Act** has established alternative dispute resolution mechanisms. I have therefore come to the conclusion that this is indeed one matter, taking into account its simplicity and the total amount claimed, that deserves to be referred to arbitration.
10. In the circumstances of this case, the balance of equity favours that the application for referral be granted and I accordingly make the following order;
- a) The dispute is referred to arbitration under the auspices of CMAC.
 - b) There is no order as 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 Applicants:

*Mr. Sandile Dlamini
(From S.K Dlamini & Company
Attorneys)*

For Respondent:

No Appearance