



**IN THE INDUSTRIAL COURT OF ESWATINI**

**JUDGMENT**

**Case No. 121/13**

In the matter between:

**MICAH SHONGWE**

Applicant

**And**

**NEED - A - PART AND FITMENT CENTRE**

Respondent

**Neutral citation:** Micah Shongwe v Need -A -Part & Fitment Centre (121/13)  
[2018] SZIC 123 (08 November 2018)

**Coram:** **S. NSIBANDE JP**

(Sitting with N.R. Manana and M.P. Dlamini Nominated  
Members of the Court)

**Date Heard:** 01 November 2018

**Date Delivered:** 08 November 2018

## JUDGMENT

- [1] The Applicant is a former employee of the Respondent. The Applicant was dismissed on 26<sup>th</sup> October 2011 and did not accept his dismissal. He reported same to the Conciliation, Mediation and Arbitration Commission (CMAC) as a dispute. Despite conciliation the dispute could not be resolved and CMAC issued a certificate of unresolved dispute.
- [2] Armed with the certificate, the Applicant approached the Court to apply for the determination of the unresolved dispute. That application is currently pending before Court. The Respondent having filed its Reply, the Applicant has now exercised his right to apply for the dispute to be referred to CMAC, in terms of Rule 18 of the rules of this Court.
- [3] The Applicant bases his application for referral of the dispute to arbitration on two points –
- (a) that the facts of the matter are straight forward, with no complex legal issues arising;
  - (b) that the amount of the claim is not substantial being E54 649.35.

[4] The Respondent's representative argued to the contrary, that

(a) the issues involved are complex;

(a) the amount claimed is substantial;

(c) there are various issues in dispute regarding whether the Applicant resigned, was dismissed or was constitutively dismissed.

That would best be dealt with in the formal setting of a Court.

[5] The pleadings before court indicate that while the Applicant claims he had worked for the Respondent since June 2005; the Respondent denies this and alleges he voluntarily resigned on or about 22<sup>nd</sup> August 2011 following his admission of dishonesty. He was then rehired on 23<sup>rd</sup> August 2011. The Respondent avers that the Applicant committed another dishonest act in October 2011 which led to his dismissal on 26<sup>th</sup> October 2011, following that Applicant was given an opportunity to answer to the allegations against him.

[6] It appears to me that although there are no complex legal issues arising from this matter there may be complex factual issues that will arise, firstly from the circumstances of Applicant's purported resignation on 22<sup>nd</sup> October 2011 and his being rehired on the next day 23/10/2011. A factual finding on the Applicant's date of employment will have a profound effect

on the amount of his claim. There will have to be factual findings made with regard to the events leading to the termination of the Applicants employ that will depend on the assessment of witnesses and their demeanor before the presiding authority.

[7] I have taken into consideration that the CMAC arbitrators now have legal training with all holding LLB degrees. However, looking at the issues involved and the amount of the claim made by the Applicant it is my view that the Respondent will be prejudiced by being forced to attend arbitration. The prejudice arises from having the doors of the Court shut to the litigant against its will in circumstances where it faces what I consider to be a substantial claim with the potential of having to navigate complex factual issues from which it can not appeal.

Accordingly and having taken into account all the foregoing circumstances of this matter, the application for referral of the unresolved dispute to arbitration under the auspices of CMAC is dismissed.



S. NSIBANDE

**PRESIDENT OF THE INDUSTRIAL COURT**

**For Applicant:** Mr. B. Mkoko

**For Respondent:** Mr. T. L. Sibandze of Rodrigues & Associates