



IN THE INDUSTRIAL COURT OF ESWATINI

HELD AT MBABANE

Case No. 329/2017

In the matter between:

BHEKITHEMBA S. MAGAGULA

Applicant

and

BUY 'N' SAVE SPAR MBABANE

Respondent

Neutral citation: Bhekithemba Seedwell Magagula vs Buy 'n' Save Spar Mbabane [329/2017] [2018] SZIC 67 (06 July 2018)

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

Date Heard: 21 June 2018

Date Delivered: 06 July 2018

RULING

- [1] The Applicant, has applied to the President of the Industrial Court for the referral of his unresolved dispute pending before the Court, to be referred to arbitration at the Conciliation, Mediation and Arbitration Commission (the Commission) in terms of Section 85 (2) of the Industrial Relations Act 2000 as amended.
- [2] The Respondent opposes the application on the basis that:
- (i) The amount claimed by the Applicant (E19 500.00) is substantial;
 - (ii) The matter will get a trial date soon because of the reinforcement of justices and Court rooms in the Industrial Court;
 - (iii) The matter is complex (both factually and legally) in that it touches on the nature of a fixed term contract; the rights of parties in fixed term contract, the rights of parties in fixed term contracts and the dissolution of such contract and
 - (iv) That Respondent will suffer prejudice if the matter is referred to CMAC for arbitration.
- [3] The Applicant on the other hand submits that the matter is not complex at all and that it is a matter that lands itself to be heard in the less formal setting of the Commission and at arbitration. He also argues that the amount claimed is not substantial.

[4] In his application for the determination of his unresolved dispute, the Applicant alleges that on the day he signed a twelve (12) month contract with the Respondent, the contract was destroyed by the Respondent's Acting Human Resources Manager after he had signed the new contract. He alleges that the Store Manager had signed the contract on behalf of the Respondent. He seeks payment of his wages for the remaining period of the allegedly signed contract (12 months).

[5] While this court, in the matter of **Sydney Mkhabela v Maxi-Prest Tyres Industrial Court Case No. 29/2005** and other subsequent cases expressed its reluctance to compel a party to submit to compulsory arbitration, it is my view that the Respondent will suffer little prejudice if this dispute is determined by arbitration under the auspices of the Commission. The Commission's Executive Secretary as far back as 2012 July assures that all CMAC arbitrators now hold LLB degree (**See in this regard "The attitude of the Industrial Court Labour Arbitration Referrals' by Nathi Gumede 4th July 2012. In the circumstances of this matter the amount claimed being, in my view, not substantial, I am satisfied that the matter lands itself to the simpler and more flexible expediency or arbitration. The questions of fact and law arising from the dispute can be navigated by an experienced arbitrator**).

[6] In the circumstances I make the following order;

1. That the application for referral of the unresolved dispute between the parties is granted in terms of paragraph I of the Notice of Application.
2. The Executive Director of the Commission is directed to appoint an attorney of 5 years post admission experience in Labour Law/Industrial Relations as arbitrator in this matter.
3. There is no order as to costs.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For Applicant: Mr L. Dlamini

For Respondent: Mr. Z.K. Mnisi