



IN THE INDUSTRIAL COURT OF ESWATINI

HELD AT MBABANE

Case No. 98/2017

In the matter between:

THULANI SIBUSISO DLAMINI

Applicant

and

A.G. THOMAS (PTY) LTD

Respondent

Neutral citation: Thulani Sibusiso Dlamini vs A.G. Thomas (PTY) Ltd
[98/2017] [2018] SZIC 68 (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] Applicant claims he was unfairly dismissed in January 2018 on allegations that his fixed term contract had come to an end whereas he was not employed on a fixed term contract. He considers that his dismissal to have been both substantively and procedurally unfair.

- [3] The Applicant wishes to have his matter referred to CMAC for arbitration in order to access the more quicker process and avoid the delay in awaiting a court hearing date. He considers that the matter is not complex nor is the amount claimed substantial.

- [4] The Respondent opposes the referral application and raises a legalistic argument on the nature of fixed term contracts and the termination thereof Respondent submitted that Applicant has not shown sufficient cause for the matter to be referred to arbitration.

- [5] It appears to me that the potential disputes of facts in this matter will not be material nor complex. The matter that may arise is with

regard to Applicant's employment in November 2016; was that employment on a fixed term contract and if not could his term of employment be legally changed to a fixed term contract in January 2017?

[6] I consider that an experienced arbitrator would be fairly able to navigate through the factual issues. The quantum of the amount sought is not substantial in my view and the Respondent has not taken issue with that aspect. Any prejudice likely to be faced by the Respondent because of being compelled to go to arbitration will be off-set by the appointment of an arbitrator with experience.

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

- 1. That the application for referral of the unresolved dispute is granted.**
- 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. E.B. Dlamini

For Respondent: Mr. S. Maziya