



**IN THE INDUSTRIAL COURT OF ESWATINI**

**RULING**

Case No. 151/2016

In the matter between:

**SINDY DLAMINI**

Applicant

And

**BONGIWE ZONDI t/a AVERE MEDI SPAR**

Respondent

**Neutral citation:** Sindy Dlamini v Bongliwe Zondi t/a Avere Medi Spar [2019]  
*SZIC 106* (12 November 2019)

**Coram:** **S. NSIBANDE J.P.**

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

**Date Heard:** 07 November 2019

**Date Delivered:** 12 November 2019

## **RULING**

- [1] This is an opposed application for the referral of an unresolved dispute between the parties to arbitration under the auspices of the Conciliation Mediation and Arbitration Commission (CMAC).
- [2] The unresolved dispute arises out of the Applicant's claim that she was unfairly dismissed by the Respondent. She claims that her dismissal was both substantively and procedurally unfair in that – (i) the Respondent terminated her services without any justifiable reason permitted at law; and (ii) she was not taken through any disciplinary process and found guilty of any misconduct.
- [3] The Respondent denies that Applicant was employed in the first place. The Respondent states that the Applicant was engaged as a Trainee Beauty Therapist and was to be trained from November 2015 until 30<sup>th</sup> January 2016. She was to receive an *ex gratia* monthly stipend that was not particularised. Respondent denies therefore that the Applicant was dismissed but avers that the agreed period of training came to an end on the agreed date being 30<sup>th</sup> January 2016.
- [4] The application for referral is based on the following reasons –

- 4.1 that the matter is not complex and can be determined by the Arbitrators under the Commission;
- 4.2 that the amount being claimed is not substantial;
- 4.3 that the nature of the claim and defence is not complex; and
- 4.4 that the Commission was established to assist in the speedy resolution of employer – employee matters which require speedy resolution.

[5] The Respondent initially opposed the application and filed an answering affidavit raising a point of law and also pointing out that –

- 5.1 the Applicant has waited for 36 months before launching this application;
- 5.2 the matter is of a complex nature and issues involved are not straight forward involving various disputes of fact.
- 5.3 that taking into account the nature of the Respondent’s business, the amount claimed (E42 200) is substantial.

[6] When the Applicant withdrew the initial application and filed a new one, the Respondent did not file not any papers in opposition. Despite the appearance of Mr M. Magagula on 31<sup>st</sup> October 2019 when the matter was postponed to 7<sup>th</sup> November 2019, the Respondent did not appear either in person or by representation.

[7] Despite the non appearance of the Respondent and without her explicit consent to arbitration, it remains the duty of the President of the Industrial Court “*to weigh the benefits of robust justice by way of CMAC arbitration against the benefits of a more formal judicial determination by the Industrial Court, in the scaled of equity and fairness.*” (**Sydney Mkhabela v Maxi Prest Tyres IC Case No. 29/2005**)

[8] Having taken consideration of the pleadings herein I consider that there are numerous disputes of fact for determination such as; was the Applicant employed or was she a trainee; was there an agreed salary/wage or was she only entitled to an unspecified ex gratia stipend; and whether there was an agreed training period three months ending on 31<sup>st</sup> January 2016. It appears to me that the complexities of facts raised require adjudication by a Court of law. An adverse finding of fact would not be effectively cured by the right to appeal (on questions of law only).

I am of the view that this matter is not one that should properly be referred to arbitration.

In any event the Applicant has failed to move with any haste in the prosecution of her claim since the matter was referred to the Registrar in June 2016, only holding a pre trial conference in October 2019. Had she done so the matter might have been allocated a hearing date in this session.

[9] In the premises the application for referral is dismissed.

There is no order as to costs.

A handwritten signature in black ink, appearing to read 'Nsibande', written in a cursive style.

**S. NSIBANDE**

**PRESIDENT OF THE INDUSTRIAL COURT**

**For Applicant:** Mr M.H. Mdluli

**For Respondent:** No appearance