



IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 53/2018

In the matter between:

PRUDENCE KUNENE

Applicant

And

SWAZILAND CONFERENCE OF CHURCHES

Respondent

Neutral citation: Prudence Kunene v Swaziland Conference of Churches
[2019] *SZIC 109* (13 November 2019)

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

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

Date Heard: 30 October 2019

Date Delivered: 13 November 2019

RULING

- [1] The Applicant, an adult Swazi female of Motshane, was retrenched by the Respondent, a non-profit organisation based at SCC Building Ngwane Street Manzini, with effect from 31st October 2017. The retrenchment was said to be due to financial constraints.
- [2] She considered her retrenchment to have been a dismissal because she says she was not consulted on the financial constraints faced by Respondent nor given any opportunity to explore other options that, may have led to an avoidance of the retrenchment. She also complained that she was given short notice of the retrenchment. She considered herself to have been unfairly dismissed.
- [3] Consequently, she filed an application for the determination of an unresolved dispute seeking relief in the total sum of E283,147.72 (two hundred and eighty three thousand one hundred and forty-seven Emalangeni seventy-two cents) being in respect of terminal benefits and compensation for unfair dismissal. Her application was opposed by the Respondent which denied that she was unfairly dismissed and averred that Applicant had been aware of the financial constraints faced by the Respondent and had been consulted on a number of

occasions regarding the retrenchment. It denied being liable to the Applicant in the sum claimed or at all.

[4] The Applicant has now applied to the President of the Industrial Court that the application for determination of the unresolved dispute be referred to the Conciliation Mediation and Arbitration Commission (CMAC) for arbitration.

[5] She states that the matter is one that can be determined at arbitration because there is no complexity of issues arising from it and that there is precedence in the form of **Paul Lincoln Ngarua v Swaziland Government Industrial Court Case No. 188/03** for matters dealing with breach of contract. The matter it was argued, is therefore not complex. It was argued that the amount claimed is substantial however CMAC has adjudicated or higher claim and has competent arbitrators that the Respondent would suffer no prejudice of the matter was referred to arbitration. Legal costs of arbitration were said to be lower thus giving advantage to the parties.

[6] The Respondent opposed the application and argued in the apposite pointing out that the amount is substantial particularly since the Respondent is a non-profit organisation surviving on the kindness of donors. Respondent also argued that the matter was complex.

[7] I have considered the arguments and the full set of pleadings. It appears to me that there may be complex matters of fact that arise from this matter. There is the issue of Applicant's supposed knowledge of the Respondent's financial distress; and whether or not there were any other consultations before the 9th October 2017.

Further, while the Applicant raised the **Paul Lincoln Ngarua** (supra) matter it is still my view that the question of whether the Court is able to order payment of wages/salary for the balance of a contract terminated before its termination date remains alive. This is so because in the **Ngarua** matter the Respondent had agreed to pay the wages for the balance of the contract. The Court did not specifically consider the implications of **Section 16 of the Industrial Relations Act 2000 (as amended)** on the claim wages for the balance of the contract. For those reasons it is my view that the matter is not one that lands itself to arbitration as that question is still to be properly considered by the Court.

[8] Further, it is my view that the amount sought is substantial especially if one has regard for the fact that the Respondent is a non-profit organisation dependant for its well being on donations. An adverse finding of fact would have grave consequences for the Respondent because the right of appeal will

not cure such short comings. The prejudice to the Respondent lies in closing the door of the Court and forcing arbitration on it while it faces a substantial claim from which it can only appeal on issues of law.

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

There is no order as to costs.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For Applicant: Ms S. Shongwe (Simelane Mtshali Attorneys)

For Respondent: Mr. G. Mhlanga (Motsa Mavuso Attorneys)