



INDUSTRIAL COURT OF ESWATINI
RULING

Case no.398/2018

In the matter between:

NOMBUSO ZIKALALA

Applicant

And

PIMENTA'S KFC

Respondent

Neutral citation: Nombuso Zikalala vs Pimenta's KFC
(398/2018) SZIC 12 (2019)

Coram: **MALINGA AJ,**
(Sitting with D. Mmango & N. Dlamini
Nominated Members of the Court)

Heard: 12th February 2019

Delivered 12th February 2019

RULING

1. This matter was issued by the Applicant through the office of the Registrar on the 13th December 2018.
2. The Deputy Sheriff served it on the Respondent's Receptionist one Miss Chazile Kunene, in terms of Rule 4(2) (b) of Act No. 20/1954 on the 20th day of December 2018 at 12:45 hrs.
3. The Deputy Sheriff has entered the following remarks to his Return of Service:

"Thereafter when the Receptionist Miss Chazile Kunene telephoned Respondents Managing Director (Patricia Ferrel) informing her about the Court documents, she told her not to sign any of the documents"
4. Indeed the application to the Court was not signed where it states: "Received copy hereof this day of December 2018" and should have been signed by the Respondent.
5. No Notice to oppose was filed by the Respondent nor was any Reply filed.
6. The matter appeared for a call on the 7th February 2019.

7. One Qondile Dlamini appeared and stated that she had heard the matter being called in Court on that day but had not been instructed to appear for the Respondent although her office usually represents the Respondent.
8. The matter was accordingly removed from the Roll.
9. The Applicant subsequently issued a Notice of Set Down of the matter dated the 8th February 2019 for the 12th day of February 2019.
10. The Notice of Set Down was served on the Respondent on the same day and was signed for by one Mr Nhlonipho Ntuli who described himself as the H.R Officer.
11. On the 12th February 2019 the matter appeared in Court. Mr Z. Hlophe appeared for the Applicant and Mr S. Dlamini stood up to state that he was appearing for the Respondent.
12. However Mr S. Dlamini still had not filed his papers to indicate that he was opposing the matter and neither had he filed his Reply to the application.

Instead he intimated that he had still not received any instructions from his clients.

13. The Applicant's Representative applied that the matter be heard *ex parte* in view of the laxity of the Respondent in dealing with the application.
14. He submitted that the Respondent is in the process of being sold and transferred to a new owner and that a delay in resolving the matter would be prejudicial to the Applicant as the new owner might not be liable for the Applicant's claim. The Respondent did not dispute this.
15. Taking into account all the circumstances of the case the Court was of the view that the application by the Applicant should succeed and accordingly made the Order that the matter shall proceed on the 19th February 2019 on an *ex parte* basis so that the matter can be brought to finality soonest.

The Members agree.



MALINGA
INDUSTRIAL COURT – ACTING JUDGE

Applicant's Attorney

Zwelakhe Hlophe
(Magagula/Hlophe Attorneys)

Respondent's Attorney

Sibusiso Dlamini
(Musa Sibandze Attorneys) .