



IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 284/15

In the matter between:

CHARLES CARLOS NKUNA

Applicant

And

NKONYENI PRE-CAST

Respondent

Neutral citation: Charles Carlos Nkuna v Nkonyeni Pre-Cast (284/2015) [2019]
SZIC 44 (03 May 2019)

Coram: **S. NSIBANDE JP**

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

Heard: 20 March 2019

Delivered: 03 May 2019

RULING

- [1] The Applicant brought an application for the determination of his unresolved dispute with the Respondent to this Court in July 2015, claiming that he was unfairly dismissed and that the dismissal was both substantively and procedurally unfair.
- [2] The Respondent opposed the application and filed its Reply denying that the Applicant had been unfairly dismissed and stating that the Applicant admitted to having grossly abused the property of Respondent at his disciplinary hearing and was dismissed in keeping with the Disciplinary Code and Procedure of the Respondent.
- [3] The application for referral is premised on the Applicant's averments that the issues for determination are not complex and that the sum claimed is not substantial to the Respondent. The sum claimed is a total amount of E162 999.65 inclusive of a claim for 5% commission of E38 374.30. Applicant also complains of the backlog of cases that exists at the Industrial Court.
- [4] The Respondent opposes the application and averred that matter is complex and that the evidence that needs to be led may be too complex for the less formal

setting of CMAC. With regard to the backlog the Respondent points out to the regular appointment of three (3) acting judges to help alleviate the backlog situation.

[5] When the matter came before Court on 20th March 2019, there was no appearance by or on behalf of the Respondent despite that the date of argument was obtain in the presence of the Respondent's representative. Mr Dlamini for the Applicant implored the Court to determine the matter on the papers filed by the parties in support of their positions regarding the referral application.

[6] I have considered the full facts of the matter as contained in the pleadings. It appears to me that a number of fairly complex matters of fact will arise for determination regarding the termination of the Applicant's employ and the issue of his "new" contract taking away his commission entitlement. These matters coupled with what I consider to be a fairly substantial claim, make me reluctant to compel the Respondent to submit to compulsory arbitration. In my view the matter ought to be contested in the more formal structure of a Court hearing.

[7] For the above reasons, the application for referral is refused. There is no order as to costs.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For the Applicant: Mr E.B. Dlamini

For the Respondent: No Appearance