

**IN THE INDUSTRIAL COURT**

**OF ESWATINI**

**CASE NO. 256/15**

In the matter between:-

**KHANYISILE DLAMINI**

Applicant

AND

**MP FOOD PROCESSORS (PTY) LTD**

Respondent

In re:

**KHANYISILE DLAMINI**

Applicant

And

**MP FOOD PROCESSORS (PTY) LTD**

Respondent

**Neutral citation:** *Khanyisile Dlamini vs MP Food Processors 256/15 [2019]*  
*SZIC 16 (22 February, 2019)*

**Coram:** N.NKONYANE, J  
*(Sitting with G. Ndzinisa and S. Mvubu Nominated  
 Members of the Court)*

Heard submissions: 11/12/18

Ruling delivered: 22//02/19

## **RULING**

- 1.** On the 10<sup>th</sup> November 2010, an Arbitrator from the Conciliation, Mediation and Arbitration Commission (CMAC) made an award against the Respondent for payment of the sum of E18, 475.60 and also that the Respondent should re-instate the Applicant to her former position with effect from 01<sup>st</sup> December 2010.
- 2.** The Respondent did not accept the Arbitrator's award and it challenged it by filing review proceedings at the High Court. The Respondent also applied for and obtained an order for stay of execution pending the finalization of the review proceedings. The review was dismissed by the High Court.
- 3.** From the record before the Court, it seems that the Respondent did not immediately comply with the Arbitrator's award after the dismissal of the

review application as the Applicant had to apply to the Industrial Court to have the award made an order of Court so that it may be enforced by execution.

4. The Respondent having obtained an order staying the execution of the CMAC Arbitrator's award did not pay the said sum of E18, 475.00 to the Applicant nor did the Applicant resume her duties on 01<sup>st</sup> December 2010, pending the finalization of the review proceedings at the High Court.
5. The review proceedings were finalized by the High Court in July 2015. The Respondent's application was dismissed. The review having been dismissed by the High Court, it meant that the Respondent had to comply with the award. Indeed, the Respondent paid the sum of E18, 475.60 to the Applicant through the offices of her current legal representatives by cheque dated 29<sup>th</sup> July 2015.
6. The payment of the sum of E18, 475.60 was only partial compliance with the award. The Respondent has failed to re-instate the Applicant as per the Arbitrator's award.
7. The Applicant has now instituted the current legal proceedings and she is seeking an order in the following terms;

1. *That an order be and is hereby issued directing the Respondent to pay the Applicant the arrear salary from the date of institution of the review application under High Court Case No. 4487/2010 to date of finalization of same.*
  2. *That an order be and is hereby issued directing that the Respondent should fully comply with the arbitration award in terms of reinstating the Applicant to her position, alternatively that the parties should negotiate a settlement in respect of the order of reinstatement as contained in the award.*
  3. *Costs of application.*
  4. *Further and, or alternative relief.*
- 8.** The Applicant's application was opposed by the Respondent. The Respondent also raised the following points of law;
- 8.1 *The Industrial Court has no jurisdiction to hear and determine the relief sought in prayer 1. The order sought in prayer 1 ought to be heard and decided by the High Court that granted the order for stay of execution, therefore it is that Court that can correctly*

*interpret and decide what it meant by stay of execution of the Arbitration award.*

- 8.2 *It is premature for the Applicant to approach this Court for relief in terms of prayer 2 because the Applicant has not presented herself to work, nor was she turned away from the Respondent's workplace.*
9. The point of law relating to lack of jurisdiction will be dismissed by the Court. It is clearly misconceived taking into account the nature of the issues that are before the Court for determination. The order sought to be enforced did not emanate from the High Court. The Applicant is seeking to enforce an arbitration award which was registered in this Court, not at the High Court.
10. The Commission (CMAC) has no authority to carry out judicial enforcement of orders; hence the arbitration award was registered in the Industrial Court. The Applicant is not seeking to enforce a High Court order.

- 11.** The second point of law, if at all it can be referred to as such, is inextricably intertwined with the merits of the application. There is now a serious dispute as to whether or not the Applicant did present herself at the Respondent's establishment to resume her duties as per the arbitration award. The Applicant stated in her founding affidavit that the Respondent failed and/or refused to take her back into its employment. The Respondent argued to the contrary in paragraph 4.4 of its answering affidavit which was deposed to by its General Manager, Mr. Louw Van Niekerk who stated that the Applicant never presented herself to work and that her conduct should be interpreted to mean that she was no longer interested in coming back to work.
  
- 12.** The Applicant in her replying affidavit denied that she did not present herself at the workstation immediately after the review application was dismissed and was accompanied by a Union Official by the name of Simanga Tsabedze. She stated that they were turned back by the Production Manager by the name of John De Castro who informed them that he had not been told that she was to return to work. Mr. Simanga Tsabedze filed a supporting affidavit and confirmed the evidence of the Applicant. An application was made on behalf of the Respondent to file a further affidavit by Mr. John De Castro. The Application was not opposed and it was granted by the Court.

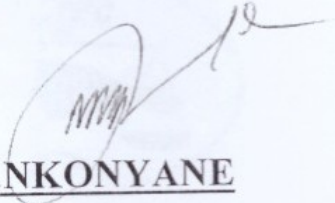
**13.** Mr. John De Castro in his affidavit disputed the versions of the Applicant and Simanga Tsabedze. He stated that the Applicant was expected to report for duty after the High Court's judgement but she failed to do so

**14.** Taking into account the dispute of facts that has arisen, the Court using its discretion will make an order that the dispute be referred to oral evidence. The Court will accordingly make the following order;

a) The matter is referred to oral evidence for the determination of the dispute whether or not the Applicant did report for work and was turned back by the General Manager at that time, Mr. John De Castro.

b) There is no order for costs.

13. The members agree.



N.NKONYANE  
JUDGE OF THE INDUSTRIAL COURT OF ESWATINI

*For Applicant: Mr. B.S. Dlamini  
(Attorney at B.S. Dlamini & Associates)*

*For Respondent: Mr. S.M. Simelane  
(Attorney at Simelane Mntshali Attorneys)*