



IN THE INDUSTRIAL COURT OF ESWATINI

JUDGMENT

Case No. 251/2018

In the matter between:

MCOLISI DUPONT

Applicant

And

HEPTAGON PTY (LTD)

Respondent

Neutral citation: Mcolisi Dupont v Heptagon Pty (Ltd) [2019] *SZIC 18* (26 March 2019)

Coram: **S. NSIBANDE JP**

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

Date Heard: 12 December 2018

Date Delivered: 26 March 2019

JUDGMENT

- [1] The Applicant has applied that the application for the determination of the unresolved dispute between him and the Respondent currently pending before this Court be referred to the Conciliation, Mediation and Arbitration Commission (CMAC) for arbitration in terms of **Section 85(2) (b) of the Industrial Relations Act 2000 as amended.**
- [2] The application for referral is based on the following:
- (a) that there are no complex legal and factual issues that arise from the case, making it one suitable for hearing at arbitration at CMAC;
 - (b) that one of the purposes of CMAC is to provide for a speedy resolution of Labour matters and that the arbitration process would provide such speedy resolution;
 - (c) that the claim is not a substantial one; and
 - (d) that there will be no prejudice to the Respondent if the matter is referred to arbitration at CMAC.
- [3] Although the application was not opposed, it is incumbent upon the President to consider whether the matter is one suitable for determination through the less formal structure of arbitration.

[4] The pleadings in the application for the determination of an unresolved dispute reveal that the Applicant's position was made redundant at a time when his fixed term contract still had thirty (30) months to run. Looking at the pleadings it appears to me that they may arise a number of disputes relating to the Applicant's date of employment; the Respondent's financial status, the issue of consultations with staff by the Respondent. An adverse finding of fact on any of these issues can not be challenged on appeal and the Respondent would be prejudiced.

[5] Secondly, the amount sought is, in my view substantive. A bulk of it comes from the claim for the payment of the total amount of the outstanding months of his fixed terms contract ie 30 months salary. The question whether the Applicant is entitled to anything more than 12 months compensation as per the **Industrial Relations Act** must, in my view, be answered in the more formal structure of court room.

[6] It is my view that the circumstances of this case militate against forcing a party that has not specifically consented to arbitration where it faces a substantial claim in the face of potential disputes of fact and complex issues of law.

[7] I must comment on the Applicants submission that the Respondent may be liquidating and that he may find himself with an empty order. It is my view

that the Applicant has other options available to him other than referral to arbitration.

[7] In the circumstances the application for referral is dismissed. There is no order as to costs.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For Applicant: Mr. V. Magagula

For Respondent: No appearance