



IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 216/2018

In the matter between:

LUNGELO MAZIYA

Applicant

And

SWAZILAND MILLING (PTY) LTD

Respondent

Neutral citation: Lungelo Maziya v Swaziland Milling [2018] *SZIC* 32 (28 March 2019)

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

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

Date Heard: 14 March 2019

Date Delivered: 28 March 2019

RULING

- [1] The Applicant instituted proceedings in the Industrial Court on 31st July 2018 claiming terminal benefits and maximum compensation for unfair dismissal in the total sum of E24 177.50.
- [2] Pleadings were closed and the matter referred to the Registrar for allocation of trial dates on 14th August 2018. A pre-trial conference was held on 13th November 2018.
- [3] The Applicant has now applied to the President of the Industrial Court for the matter to be referred to arbitration under auspices of CMAC as provided for in **Section 85(2) of the Industrial Relations Act**.
- [4] The reasons given for the application are that:
- (i) *“the claim in this matter is meagre ... It would not be in the interests of justice to wait for years due to the backlog at the Industrial Court to have the Court decide on such a small claim.*
 - (ii) *“the issues involved in the matter are not complex ... ”*
- [5] The Respondent opposes the application and set out the following factors which the Court was told, militate against the referral to arbitration:

5.1 *“This matter has complex legal issues for determination. In particular there is the question of the validity of the use of results from a polygraph test in the test in the finding of guilt or otherwise of an employee at a disciplinary hearing. That this legal issue is novel and had never been decided upon and should the matter be referred to arbitration the arbitrator will have no guidance from precedence in adjudicating on the issue.”*

[6] The Applicant’s Respondent’s attorney argued that the arbitrator could seek guidance from the Labour Court of South Africa – Durban judgement in the matter of **DHL Supply Chain SA (Pty) Ltd V De Beer N.O. and Others (D738/10) [201] ZA LCD 15**; that the facts of the matter were not complex and that the amount claimed was meagre.

[7] I have considered the arguments of the parties as well as the pleadings herein. While the amount sought by the Applicant is meagre, it is correct that the determination of an accused employee’s guilt by evidence obtained from a polygraph test is a novel case within this jurisdiction. Having regard to the case of **OK Bazzars Swaziland (Pty) Ltd t/ Shoprite v Mpendulo Dlamini and 21 Others High Court Case No. 1181/2015**, it appears to me that this is a novel issue that must be dealt with, through adjudication by a Court of law. While there is a backlog at the Industrial Court and the Applicant’s claim is not substantial by any means, the polygraph test results and the weight to be given thereto as well as the accuracy and reliability of such tests require the more formal adjudication process by this Court. Formal process in the

form of Court proceedings in my view is most appropriate despite the claim not being substantial.

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

There is no order as to costs.

A handwritten signature in black ink, appearing to read 'Nsibande', written in a cursive style.

S. NSIBANDE
PRESIDENT OF THE INDUSTRIAL COURT

For Applicant: Mr. E. Dlamini

For Respondent: Mr. S. Dlamini