



IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 31/19

In the matter between:

NHLAKANIPHO MHLONGO

Applicant

And

CONSTRUCTION LOGISTICS (PTY) LTD

Respondent

Neutral citation: Nhlakanipho Mhlongo v Construction Logistics (Pty) Ltd
(31/2019) [2019] SZIC 76 (16 September 2019)

Coram: **S. NSIBANDE JP**

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

Heard: 05 June 2019

Delivered: 16 September 2019

RULING

[1] The Applicant has applied to the President that his unresolved dispute with the Respondent be referred to CMAC for arbitration in terms of **Section 85 (2) (b) of the Industrial Relations Act.**

[2] When the application was heard on 5th June 2019, the Respondent was not before Court despite that the application for referral was served on its attorneys of record on 15th May 2019. There being no explanation for the Respondent's absence. The Court being satisfied that the Respondent had been properly served allowed the Applicant to proceed with his application before Court.

[3] The Applicant seeks to have the matter referred to arbitration under the auspices of CMAC for the following reasons –

3.1 that there are no complex issues arising from the matter that can not be ventilated upon by a Commissioner.

3.2 that the amount claimed is a consequence of the provisions of the law and ought not be material to whether or not the matter is referred to CMAC. Further that CMAC has granted award in excess of E200 000.00 which have with stood sanctity at both the High Court and the Supreme Court.

3.3 that the quality of CMAC Commissioners is such that there will be no prejudice suffered by the Respondent of the matter is referred.

[4] Applicant, in his initial application seeks payment 12 months salary as compensation for unfair dismissal in the sum of E216 000 (two hundred and sixteen thousand Emalangeni). Applicant considers that he was unfairly dismissed both substantively and procedurally in that he did not commit any misconduct thus there was no reason permissible in terms of **Section 36 of the Employment Act 1980** nor was there any due process leading to his dismissal.

[5] The submissions of the Applicant and the pleadings in the main application have been considered. I have also taken into account the full circumstances of this case. It appears to me that a number of disputes of fact may arise from this matter and the circumstances surrounding the Applicant's departure from the Respondent's employment. While these facts may not be too complex to establish, it would still be prejudicial to the Respondent to force it to arbitration in a situation where it faces a substantial claim, in circumstances where it will be unable to appeal against an adverse finding of facts.

[6] It is my finding that the balance of equity favours the more formal structure of a court hearing and militates against this matter being referred to arbitration. In the circumstances and for the above reasons I make the following order:

(a) The application for referral is dismissed.

(b) Each party is to pay its own costs.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For the Applicant:

Mr B. Gumedze

For the Respondent:

Motsa Mavuso Attorneys (Not before Court)