



IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 203/17

In the matter between:

DAISY VILANE

Applicant

And

BAPHALALI SWAZILAND RED CROSS SOCIETY

Respondent

Neutral citation: Daisy Vilane v Baphalali Swaziland Red Cross Society
(203/2017) [2019] SZIC 90 (07 October 2019)

Coram: **S. NSIBANDE JP**

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

Heard: 11 June 2019

Delivered: 07 October 2019

RULING

[1] The Applicant has applied to the President of the Industrial Court for the referral of the unresolved dispute between herself and the respondent currently pending before this Court to arbitration under the auspices of CMAC in terms of **Section 85 (2) of the Industrial Relations Act 2000 as amended.**

[2] The reasons advanced by the Applicant for the referral application are that:

2.1 by virtue of the backlog of cases within the Court system the matter will take long to be heard;

2.2 the issues arising in this matter are not so complicated such that they may be resolved by arbitrators. There are no complex issues of fact or law arising from the application;

2.3 the Respondent would suffer no prejudice if the matter were referred to arbitration.

[3] At the hearing of the application, the Respondent did not appear despite that it had been served with the application. Despite the absence of the Respondent it remains *“the duty and function of the President of the Industrial Court to weigh the benefits of robust justice by way of CMAC arbitration against the benefits of*

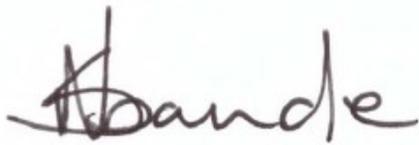
a more formal judicial determination by the Industrial Court in the scales of fairness and equity” (Per. Dunseith J.P. in **Sydney Mkhabela v Maxi Prest Tyres Industrial Court No. 29/2005**).

[4] The Applicant claims a sum of E98 428.27 (Ninety eight thousand four hundred and twenty eight Emalangenzi twenty-seven cents) in respect of terminal benefits, leave pay and compensation for unfair dismissal. She alleges that her dismissal was both substantively and procedurally unfair in that there was no fair reason for termination of her services and she was denied the right to appeal the termination decision.

[5] The Respondent in its reply to the initial application states that the Applicant was found guilty of misappropriation of Respondent’s funds; misconduct and gross dishonesty in the conduct of duty; that an independent and impartial chairman accepted the evidence led at the disciplinary hearing; and that, having been given the verdict and sanction, the Applicant failed to lodge her appeal timeously and in terms of the Respondents appeal procedure.

[6] I have taken into consideration the Applicant’s submissions at the hearing of the matter and the pleadings in the main application. It appears to me that there are a

number of disputes of fact that may arise regarding the misappropriation of funds and the gross dishonestly. While I accept that the qualifications of arbitrators at CMAC has improved (as per Nathi Gumede - **The attitude of the Industrial Court to Labour Arbitration referrals**), I am of the view that an adverse finding of fact against which the Respondent is unable to appeal would be of grave consequence to the Respondent. This is more so since I consider the claim of E98 428.27 against the Respondent to be substantial. To close the doors of Court against the Respondents will be prejudicial to the Respondent. In the circumstances the application for referral is refused. There is no order as to costs.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For the Applicant:

Mr T. Masondo

For the Respondent:

(PR. Dunseith Attorneys)