IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 216/16

In the matter between:

NOMFUNDO BAWINILE MNDZEBELE Applicant

And

INDALI FASHIONS Respondent

Neutral citation: Nomfundo Bawinile Mndzebele v Indali Fashions *(216/2016)* [2019] *SZIC 92* (07 October 2019)

Coram: **S. NSIBANDE JP**

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

Heard: 19 June 2019

Delivered: 07 October 2019

RULING

[1] The Applicant instituted proceedings in this Court on 21st July 2016, claiming compensation for unfair dismissal, payment of terminal benefits and payment for leave due work done on public holidays, overtime worked and not paid and off days worked and not paid, in the total amount of E22 435.08

[2] Applicant's claim is based on her contention that her dismissal was unfair both substantively and procedurally. She alleges that she was unfairly dismissed following a sham disciplinary hearing wherein she was found guilty of absenteeism and subsequently dismissed. Her appeal was unsuccessful.

[3] The Respondent denies that the dismissal of the Applicant was unfair either procedurally or substantively. It alleges that the Applicant absented herself from work for a period exceeding three days without just cause, was found guilty by a duly constituted disciplinary tribunal and was dismissed; was afforded the right to appeal but her appeal was unsuccessful.

[4] The Applicant has now applied to the President of the Industrial Court for the matter to be referred to arbitration under the auspices of the Conciliation Mediation and Arbitration Commission (CMAC) as provided for by **Section 85 (2) (b) of the Industrial Relations Act 2000 as amended**.

The basis of the application is that:-

4.1 There are no complex issues involved in this matter;

4.2 The arbitration process is quicker than the proceedings before this Court because of the backlog of cases existing in the Court system;

4.3 The amount claimed E22 435.08 is not substantial.

[5] The Respondent's attorneys did not appear before the Court on 19th June despite that they had been duly served with the application. Being satisfied that the Respondent had been duly served, we allowed the Applicant to move her application.

[6] Despite the Respondent's absence I am duty bound 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" **(Sydney Mkhabela v Maxi Prest Tyres IC Case No. 29/2005)**.

[7] In so doing, I have considered the full set of pleadings herein. In its reply the Respondent avers that the Applicant's services were fairly terminated in terms of **Section 36 (f) of the Employment Act 1980**. Despite this averment, I do not foresee any complex issues of fact arising from the facts of this matter. The matter will likely turn on how long Applicant was away from work and whether she was indeed away without authority. Further the amount claimed is not substantial and in my view, any prejudice the Respondent could face as a result of a referral of the matter to arbitration can be offset by the appointment of an appropriately qualified and experienced arbitrator.

[8] In the circumstances I find that this is a matter that would benefit from the robust justice of CMAC and order the following:

1. **The dispute both the parties is referred to CMAC for arbitration.**

2. **The Executive Directory CMAC is directed to appoint a legal practitioner with at least 4 years experience in labour law issues.**

3. **Each party is to pay its own costs.**

S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For the Applicant:	Mr M. Manana (David Msibi & Associates, Labour Consultants)
For the Respondent:	No appearance (Musa M. Sibandze Attorneys)