



**IN THE INDUSTRIAL COURT OF ESWATINI**

**RULING**

Case No. 366/2018

In the matter between:

**MELUSI PHIRI**

Applicant

And

**LEWIS STORES (PTY) LTD t/a BEST ELECTRIC**

Respondent

**Neutral citation:** Melusi Phiri v Lewis Stores (Pty) Ltd t/a Best Electric [2020]  
*SZIC 117* (31 January 2020)

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

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

**Date Heard:** 25 July 2019

**Date Delivered:** 31 January 2020

## **RULING**

- [1] The Applicant has applied to the President for the referral of his application for the determination of an unresolved dispute that is pending before this Court to be referred to the Conciliation, Mediation and Arbitration Commission (CMAC) for arbitration. The application has been opposed by the Respondent.
- [2] The unresolved dispute arises out of what the Applicant considers to have been an unfair termination of his employment by the Respondent on 21<sup>st</sup> February 2017. He alleges that the termination of his employment was both substantively and procedurally unfair and claims payment of E294 060.00 being in respect of his terminal benefits and maximum compensation.
- [3] The Applicant alleges his dismissal was substantively unfair because the Respondent used questionable evidence to convict him of a dishonest that he had not committed. Further that the dismissal was procedurally unfair because the chairman of the disciplinary hearing refused to make a ruling on a point *in limine* raised at the hearing by Applicant; the Respondent failed to apply consistency in its disciplinary processes; the appeal was presided over by a Manager who was the same level as the Chairman of the disciplinary

enquiry; and the Chairman of the appeal hearing failed to consider mitigation circumstances and the personal record of the Applicant.

[4] The Applicant applies that the matter be referred to arbitration because:

4.1 the dispute is not complex and does not involve crisp issues of law; and

4.2 the Court has a backlog of cases which will cause him to spend years awaiting trial.

At the hearing of this matter the Applicants representative emphasised the point of delay in the finalisation of the matter indication that two potential witnesses have passed on while the matter awaits hearing.

[5] The Respondent in opposing the application submitted that

5.1 the Applicant has not acted with any haste in prosecuting his claim in that he received the certificate of unresolved dispute on 2<sup>nd</sup> November 2017 but only launched his application in Court a year in November 2018.

5.2 that the Applicants cause of action is convoluted which indicates that the issue therein are complex and many and can only be properly determined by the Court;

5.3 the amount claimed is substantive.

The Court was referred to the cases of **Sydney Mkhabela v Maxiprest Tyres IC Case No. 29/2005** and **Zodvwa Gamedze v Swaziland Hospice at Howe IC Case No. 252/2005**.

[6] Having considered the pleadings, the heads of argument filed by the parties and their submissions in Court, I am of the view that there are numerous disputes of fact for determination in this matter, some of which will in my view be complex.

[7] The amount sought by the Applicant is quite substantial. The Respondent stands to be prejudiced by an order for compulsory arbitration in circumstances where it is unable to appeal against an adverse finding of fact in the face of a substantial claim.

[8] I am not persuaded that this matter ought to be referred to arbitration despite the improvement in the quality of CMAC arbitrators as stated by **Nathi Gumede 4<sup>th</sup> July** in **“The attitude of the Industrial Court to Labour Arbitration Referrals.”** The matter can be better tried in the more formal structure of a Court hearing.

[9] 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. R. Ndlangamandla

**For Respondent:** Ms. M. Dlamini (Henwood & Company)