



IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 99/2020

In the matter between:

SABELO TSAMBOKHULU

Applicant

And

GUNDANE AND SONS (PTY) LTD

Respondent

Neutral citation: Sabelo Tsambokhulu v Gundane & Sons [2020] SZIC
126 (11 November 2020)

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

(Sitting with M.P. Dlamini and Mr E.L.B. Dlamini
Nominated Members of the Court)

Date Heard: 12 August 2020

Date Delivered: 11 November 2020

RULING

- [1] The applicant is a former employee of the Respondent. He was dismissed by the respondent on 25th November 2019. He did not accept his dismissal which he considered to be both substantively and procedurally unfair. He reported a dispute at the Conciliation Mediation and Arbitration Commission (CMAC). The Commission was unable to resolve the dispute and therefore issued a certificate of unresolved dispute.
- [2] The applicant then approached this Court for the determination of the unresolved dispute. The respondent opposed the application for the determination of an unresolved dispute and after the filing of the Respondent's reply the matter was referred to the Registration of the Court for the allocation of trial dates.
- [3] The applicant has now applied that the matter be referred to arbitration in terms of **Section 85 (2) (a)** of the **Industrial Relations Act 2000 as (amended)**. The application is opposed.
- [4] The parties filed heads of argument in Court. The applicant's attorney argued that:

4.1 The matter is not complex, factually or legally. It was submitted that the facts of the matter were common caused and that the only issue for determination was whether there was evidence of the applicant committing the offence complained of. The applicant's attorney argued that the only evidence linking applicant to the offence was circumstantial evidence based on a sniffer dog which was uncorroborated. Applicant argued that the fact that there was evidence based on a sniffer dog did not make the matter complex as the arbitrator would be required to weigh such evidence as he would any other evidence given and that there are rules of evidence applicable to such evidence;

4.2 the matter stands to be resolved more swiftly at arbitration because of the backlog of cases in the Court roll;

4.3 there is no prejudice likely to be suffered by the respondent because CMAC arbitrators now hold the LLB qualification;

4.4 the amount claimed by the applicant E33 399 (Thirty-three thousand three hundred and ninety-nine Emalangeni) is not a substantial amount regard being had to the respondent's business and financial standing.

[5] The respondent's attorney submitted that the matter had legally complex issues arising from the evidence led at the disciplinary hearing – the evidence deduced from the use of a sniffer dog and the expert who was called upon to explain the actions of the sniffer dog.

[7] Further, the respondent submitted that the amount claimed was substantial given the current economic situation.

[8] I have read the pleadings and heads of argument in this matter and the pleadings in the main application and I have come to the conclusion that the matter are not particularly complex. On the face of it, it may seem that the sniffer dog evidence complicates the matter. However, the sniffer dog evidence constitutes circumstantial evidence. The dog specialist assists the panel hearing the matter by interpreting the dog's action. The panel would refer to the normal rules regarding the treatment of circumstantial evidence as set out in the case of **R v Bloom 1939 AD 188**, cited by the applicant's attorney.

[9] I am confident that with the improved calibre of arbitrators at CMAC, as stated in **Nathi Gumede's** article of **4th July 2012** titled: **"The attitude of the Industrial Court on Labour Arbitration Referrals,**

will offset any potential prejudice the respondent may suffer by being forced to arbitration.

[10] Further, the amount claimed (E33 349) is not substantial in the circumstances of the respondent. In any event, and as indicated above I am satisfied that the respondent will not be unduly prejudiced by a referral of this matter to arbitration.

[11] In the circumstances I make the following order.

11.1 The matter is referred to CMAC for arbitration.

11.2 The executive director of CMAC is directed to appoint an arbitrator with at least 5 years post admission experience.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For Applicant: Mr. A. Ndwandwe (A.S. Ndwandwe & Co)

For Respondent: Mr. W. Manana (Gundane & Sons (Pty) Ltd)

