



## IN THE INDUSTRIAL COURT OF ESWATINI

HELD AT MBABANE

Case No.60/2022

In the matter between:

**PATRICK DLUDLU**

Applicant

And

**NDZ CONSULTING COMPANY**

Respondent

Neutral Citation: Patrick Dlodlu vs. NDZ Consulting Company Ltd (60/2022)  
[2022] SZIC103 (25 August 2022)

Coram: **V.Z. Dlamini – Acting Judge**  
*(Sitting with D.P.M. Mmango and M.T. E Mtetwa – Nominated  
Members of the Court)*

Last Heard: 25 May 2022

Delivered: 25 August 2022

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## RULING

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### INTRODUCTION

[1] The Applicant, a liSwati male of Nhlangano in the district of Shiselweni filed an application for determination of an unresolved dispute against the Respondent, a company incorporated in terms of the Company laws of Eswatini, on the 2<sup>nd</sup> March 2022. The cause of action was unfair dismissal and the relief claimed was the following:

1. *Notice pay* = E2, 012.00
2. *Additional notice* = E365.81
3. *Severance allowance* = E914.50
4. *12 months' salary remaining*  
*On contract* = E24, 144.
5. *Costs of suit*
6. *Further and/or alternative relief.*

### BACKGROUND FACTS

[2] It is common cause that the Applicant reported a dispute to the Conciliation, Mediation and Arbitration Commission (CMAC) within the mandatory **eighteen (18) months** after his alleged dismissal on the 19<sup>th</sup> December 2013. CMAC issued the Certificate of Unresolved Dispute on the 10<sup>th</sup> April 2014.

As alluded above, the Applicant filed the present application in March 2022, virtually **eight (8) years** after the certificate was issued by CMAC.

### PRELIMINARY ISSUE

- [3] In meeting the application, the Respondent raised a preliminary point and further pleaded on the merits. Basically, the Respondent contends that the Applicant had unreasonably delayed in prosecuting his claim in Court after obtaining the Certificate of Unresolved Dispute at CMAC. The Respondent also argued that if the matter was enrolled for trial, it would suffer prejudice because its documentary evidence was long lost and its witnesses could no longer be traced.
- [4] In response to the point *in limine*, the Applicant filed an application for condonation for the late filing of the main application; the Respondent in turn opposed application for condonation.

### LEGAL DEVELOPMENT

- [5] Although the Court heard full arguments for and against the application for condonation; it will not give a ruling of the point at this stage on account of certain legal developments that came to the fore while we were in the process of preparing the said ruling, which the Court explains below.
- [6] At present, there is no precedent by this Court or the Industrial Court of Appeal in respect of applications for condonation for late filing of a claim

after the issuance of a Certificate of Unresolved Dispute by CMAC. The Court has however granted leave to applicants to file applications for condonation, which were never decided. See: **Hlengiwe Dlamini v Sicele Mthethwa Case No.92/2010 SZIC (unreported)**; **Vusi Sikelela Dlamini v Eagles Nest (Pty) Ltd Case No. 150/2010 SZIC (unreported)** and **Bheki Tsabedze v Rob's Electrical (Pty) Ltd (299/2018) [2018] SZIC 141 (12 December 2018)**.

- [7] On the other hand, the Court and the Industrial Court of Appeal have upheld the point *in limine* based on the peculiar facts of each case that came before them. See: **Usuthu Pulp Company (Pty) Ltd v Jacob Seyama and 4 Others Case No. 01/2004 SZICA (unreported)**; **Musa Douglas Khumalo and 31 Others v Steel and Wire International (Pty) Ltd (382/2017) [2021] SZIC 62 (27 August, 2021)**.
- [8] After the Court upheld the point *in limine* in the case of **Musa Douglas Khumalo and 31 Others (supra)**, applicants noted an appeal against its ruling. While the Industrial Court of Appeal was dealing with an application for condonation for late filing of the record of appeal, the question regarding the filing of an application for condonation for late filing of claim came under scrutiny as one of the questions of law that should be decided once and for all, in the recent case of **Musa Douglas Khumalo and 31 Others v Steel and Wire International (Pty) Ltd (19/2021) [2021] SZICA 6 (2022)**.

[9] The Industrial Court of Appeal in **Musa Douglas Khumalo and 31 Others v Steel and Wire International (supra)** at paragraph 14.4 made the following instructive remarks:

*“The Applicants (Appellants) have raised an arguable issue on appeal. In this particular case the Appellants have prospects of success on appeal. The question as to when should an applicant file his claim before the Industrial Court – after a certificate had been issued – does not appear to have been settled. It is clearly a question of law that deserves a further consideration and determination by the Court. The concomitant question as to when (if at all) should the applicant, (before the Industrial Court), apply for condonation for late filing of his claim – is also a question of law which has not been settled yet. The nature of the legal question that is contained in the notice of appeal as well as the extent of the delay in filing the record has persuaded the Court to grant condonation for late filing of the record of appeal....”* [Emphasis added].

[10] The Industrial Court of Appeal then granted the following orders:

*“16.1 Condonation for late filing of the record is hereby granted.*

*16.2 The appeal is accordingly revived.*

*16.3 The parties are to comply with the rules of Court regarding filing heads of argument and supporting authorities.*

*16.4 Each party is to pay its costs.”*

## CONCLUSION

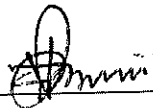
[11] The aforementioned appeal, which raises the very question that this Court is called upon to decide, is pending argument and determination by the Industrial Court of Appeal. In the Court's view, based on the above reasons, it is advantageous and in the interest of justice that the determination of the application for condonation in this Court be stayed pending the decision of the Court of Appeal, which should give the long awaited guidance on the question.

[12] In the premise, the Court orders as follows:

[a] The determination of the application for condonation for late filing of the Applicant's claim is stayed pending the decision of the Industrial Court of Appeal in the case of **Musa Douglas Khumalo and 31 Others v Steel and Wire International (Pty) Ltd (19/2021) [2021] SZICA 6 (2022)**.

[b] There is no order for costs.

The Members agree.



**V.Z. DLAMINI**

**ACTING JUDGE OF THE INDUSTRIAL COURT**

For Applicant : Mr. V. Magagula  
(Labour Consultant)

For Respondent : Mr. H. Nhleko  
(NDZ Ngcamphalala Attorneys)