

IN THE CONCILIATION, MEDIATION AND ARBITRATION COMMISSION (CMAC)

Held in Manzini

SWMZ 127/09

In the matter between;

Glory Mkhonta Applicant

AND

Pheda Fashions Respondent

CORAM;

ARBITRATOR : THULANI DLAMINI
FOR APPLICANT : J. Dlamini
FOR RESPONDENT : D. Msibi

RULING ON PRE-LIMINARY POINT

1. Parties and Hearing

The Applicant in this matter is the Glory Mkhonta an adult Swazi female and employee of the Respondent.

The Respondent on the other hand is Pheda Fashions a company duly incorporated in terms of the company laws of the country with its principal place of business in the Manzini Region. I was appointed to arbitrate in this dispute in May 2009. The matter had its first sitting on the 27th May 2009 and thereafter there were numerous postponements until the 18th August 2009 when it was finally heard. Even then the Respondent's representative raised a preliminary point which I will be dealing with hereunder.

2. PRE-LIMINARY POINT

At the hearing of the matter the Respondent's representative, Mr Msibi raised a preliminary point arguing that the dispute before the Commission had been overtaken by events. Seeking to clarify his point Msibi mentioned that the Applicant had left employment on her own accord citing constructive dismissal and as such was no longer an employee of the Respondent. This therefore means since the present dispute before the Commission is for lifting of the Applicant's suspension then it could not be adjudicated upon as the Applicant is no longer an employee with enforceable rights against the Respondent.

In this regard I was referred to dispute number SWMZ 378/2008 which was reported by the present Applicant against its employer, the

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present Respondent. That dispute was for constructive dismissal and was referred to the Commission in October 2008.

That was the Respondent's case in the points in limine raised.

APPLICANT'S ANSWER TO THE POINT IN LIMINE RAISED

In answer to the point raised by the Respondent the Applicant started off by explaining that dispute SWMZ 378/2008 was reported to the Commission by the Applicant in October 2008 after her suspension in July 2008. The Applicant viewed her suspension as a disguised 'dismissal' hence her report of constructive dismissal. Apparently the Applicant was then advised that a suspension did not amount to a dismissal and she then wrote a letter to the Commission seeking to withdraw the dispute on the 22nd January 2009. After her withdrawal of dispute SWMZ 378/2008 she then reported a new

dispute under case SWMZ 127/2009 this time seeking to have her suspension of July 2008 lifted.

Mr Dlamini on behalf of the Applicant explained that the reason the Applicant decided to report a constructive dismissal dispute was because as at October 2008 her disciplinary hearing had still not taken off. And to compound her situation further was that there was nothing forth-coming from the Respondent as regards the hearing and she was not being paid.

Seeking to clarify about the disciplinary hearing Msibi explained that the hearing was cancelled in November 2008 following the Applicant's decision to report a dispute of constructive dismissal to the

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Commission. He stated as well that as far as he was aware the Respondent was not made aware of the Applicant's decision to withdraw the constructive dismissal dispute.

3. ANALYSIS OF SUBMISSIONS AND ARGUMENTS.

Basically the Respondent's preliminary point is to the effect that since the Applicant had reported a constructive dismissal case under case SWMZ 378/2008 then the current dispute should not be adjudicated on by the Commission since the Applicant is no longer an employee of the Respondent. On the other hand the Applicant argues that the first dispute was ill advised hence her decision to withdraw it. Indeed there is correspondence from the Applicant directed to the Commission and copied to the Respondent. That to me means that dispute SWMZ 378/2008 no longer exists. As to why the Respondent's representative seeks to resuscitate that which has been withdrawn boggles my mind.

I am even failing to understand how the Respondent failed to raise this argument at conciliation as that would have been trashed out then, and I believe to finality.

4. RULING

In the circumstances the ruling I make is as follows;

- (i) The point in limine raised by the Respondent is hereby dismissed and the matter is to proceed to its merits under a different Commissioner to be appointed by the office of the Executive Director.

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DATED AT MANZINI ON THIS 18th DAY OF NOVEMBER, 2009.

THULANI DLAMINI

CMAC COMMISSIONER

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