



CONCILIATION, MEDIATION & ARBITRATION COMMISSION (CMAC)

HELD AT MANZINI

SWMZ 20/2012

In the matter between:-

BETHUSILE DLAMINI

1stAPPLICANT

FIKILE DLAMINI

2ndAPPLICANT

NONHLANHLA MASEKO

3rdAPPLICANT

CELIWE DLAMINI

4thAPPLICANT

LINDIWE MLAMBO

5thAPPLICANT

And

LUCKY ARK'S INVESTEMENTS

(PTY) LTD

RESPONDENT

CORAM:

Arbitrator : Khanyisile Msibi

For Applicant : Ncamile Mkhathshwa

For Respondent : Mr Selby Dlamini

ARBITRATION AWARD

(16/05/17)

1. DETAILS OF HEARING AND REPRESENTATION

- 1.1 The Applicants in the matter are Celiwe Dlamini, Nonhlanhla Maseko, Lindiwe Mlambo, Theresa Matsenjwa, and Fikile Dlamini duly represented during these proceedings by Ms. Ncamsile Mkhathshwa a lawyer from Mlangeni and Company.
- 1.2 The Respondent is Lucky's Ark Investments (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of the country having its principal place of business at Matsapha in the District of Manzini duly represented during these proceedings by Mr. Selby Dlamini.
- 1.3 The arbitration hearing was held at CMAC-Manzini Office situated at KalaNkhosi Building. The matter was heard on the 24th June 2016, 15th July 2016, 28th July 2016, and 29th July 2016.

2. BACKGROUND TO THE ISSUE

- 2.1 The Applicants in the above matter sought to resolve a dispute pertaining to unfair termination of employment through Conciliation with the Conciliation, Mediation and Arbitration Commission, by lodging a dispute form on the 13th February 2012.
- 2.2 The Respondent party together with the Applicants were invited to attend to conciliation on the 29th February 2012; however, only the Applicants honoured the invitation. The presiding Commissioner having

satisfied himself in terms of **Section 81** of the **Industrial Relations Act 2000 (as amended)** that the Respondent had been duly served with the invitation to attend Conciliation duly issued a default judgement in terms of **Section 81 (7)(b)** of the **Act**.

2.3 The Respondent being dissatisfied with the issuance of the Default judgement proceeded to seek a rescission of the judgement in the High Court of Swaziland and by High Court Case No. 1619/2012 the matter was duly referred back to the Commission for Arbitration.

3. **ANALYSIS OF THE EVIDENCE**

3.1 However; what remains an anomaly in the judgement of the Honourable Mabuza J, was that the referral back to CMAC was to arbitration and not Conciliation.

3.2 **Section 64(1)** of the **Industrial Relations Act** provides that *“The Commission shall (b) attempt to resolve, through conciliation, any dispute referred to it in terms of this Act;*

*(c) **where a dispute referred to it remains unresolved after conciliation, arbitrate the dispute if:***

(i) this Act requires arbitration;

(ii) this Act permits arbitration and both parties to the dispute have requested that the dispute be resolved through arbitration; or

(iii) the parties to a dispute in respect of which the Industrial Court has jurisdiction consent to arbitration under the auspices of the Commission; and

3.3 Particular emphasis is drawn to c, above which mandates that the initial step preceding arbitration is referral to conciliation, thereafter to be followed by arbitration.

3.4 As such I am inclined to state that this matter be referred to conciliation. This is because the **Industrial Relations Act 2000 at Section 81(2)** defines conciliation as *including mediation, fact finding and making recommendations to the parties*. This provision read together with **Section 4.2 of the Code of Good Practice** as amended -**CMAC Guidelines** which provides *that conciliation is a compulsory stage before utilising other mechanisms to resolve the dispute*, necessitates the need for the parties to undergo conciliation before proceeding to arbitration.

3.5 As such I am inclined to state that this matter be referred to conciliation and thereafter to arbitration as per the directive of the Honorable Mabuza J.

4. **AWARD**

4.1 I am thus of the view that the above matter be referred to conciliation, and if it remains unresolved to arbitration.

**THUS DONE AND SIGNED AT MANZINI ON THIS DAY
OF MAY, 2017.**

**KHANYISILE MSIBI
CMAC ARBITRATOR**