IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 266/07

In the matter between:

NCAMSILE NKAMBULE **APPLICANT**

And

T.J.L. GREAT LAC INVESTMENTS (PTY) LTD
T/A MR. CHEAP FABRIC CENTRE RESPONDENT

CORAM:

NKOSINATHI NKONYANE: JUDGE

DAN MANGO: MEMBER

GILBERT NDZINISA: MEMBER

FOR APPLICANT: M. NKOMONDE

FOR RESPONDENT: D. MSIBI

RULING 29.08.07

[1] This is an application for determination of an unresolved dispute brought by the applicant against the respondent.

[2] The applicant claims that she was constructively dismissed by the respondent.

[3] In its reply the respondent raised points in *limine.* The court is called upon to make a ruling on these points before the application goes for trial.

[4] The first point raised by the respondent is that:

"The applicant, according to her letter of resignation she did not allege any constructive dismissal. Further no averment in her letter that she once complained about unfair treatment. In the circumstances she left employment at her own accord. "

[5] The court will point out that there is no legal requirement that an employee who claims to have been constructively dismissed should make the allegations of constructive dismissal in the letter of resignation. JOHN GROGAN in his book "WORKPLACE LAW" 2005 8th EDITION AT PAGE 113 states as follows dealing with this subject;

"Such coerced resignations or departures are commonly known as 'constructive dismissals'. The employees concerned are deemed to have been dismissed even though they themselves terminated the contract. The employees need not have formally resigned, however; constructive dismissal can be proved even when the employees simply left their employment in circumstances that would otherwise have amounted to abscondment."

[6] It follows therefore that this point must be dismissed.

[7] The respondent further raised the point that:

"Further in her letter of resignation she referred to a complain which occurred while she was working at Textile World a company which has not been cited in these proceedings yet it has an interest. "

[8] If there is another company that has an interest in these proceedings, it may simply apply to the court to be joined. The respondent's contention is not that of non-joinder. The court is not sure how mentioning of Textile World in the applicant's resignation letter prejudices the respondent in these proceedings. In

the application before court the applicant's claim is against the respondent only. This point will also be dismissed.

[9] The third point raised is that of jurisdiction. The respondent argued that in the report of dispute annexure "NN1" at paragraph 5.2 it is stated that the dispute first arose in November 2001. The respondent argued that if the dispute first arose in November 2001, the dispute is now time barred. The respondent further argued that the application is defective in that the party referring the dispute to CMAC did not personally sign the documents.

With respect, we do not agree with the respondent's submissions. The applicant instructed the present attorney to represent her. The attorney told the court that he filled the forms of the report of the dispute on behalf of his client, the applicant.

The applicant's attorney further told the court that it was him who made the mistake by writing that the dispute first arose in November 2001.

The court will accept the applicant's attorney's explanation especially in the light of annexure "A" of the applicant's application. Annexure "A" is a document that shows that the applicant left the respondent's employment on 3 February 2006 after having been accused of being short of cash in the till, but was not invited to join the counting.

From the report of the dispute annexure "NN1" the applicant was first employed by the respondent in November 2001. One of the claims that the applicant has filed against the respondent is that of underpayment. The respondent's argument was that since the underpayments had been going on for a number of years, it must be taken that the dispute first arose on the date of the first underpayment.

We do not agree with the respondent. The claim for underpayments is just one

of the prayers that the applicant seeks before the court. The present application is based on constructive dismissal of the applicant alleged to have taken place on 3 February 2006. It is clear that the point of law raised that the dispute is time barred was misconceived. It is accordingly dismissed.

It was also argued that the respondent was wrongly cited in this application. This argument was based on the fact that in the certificate of unresolved dispute the respondent's name appears as "TIL Greatelac Investments (PTY) Ltd" whereas in this application the respondent's name appears as "TJL Greate Lac Investments (Pty) Ltd t/a Mr. Cheap Fabric Centre"

There was no dispute that TJL Create Lac Investments (Pty) Ltd is the parent company and it has a number of other subsidiaries. There was no dispute that Mr. Cheap Fabric Centre (Manzini) is one of them.

[17] The respondent, as it appears from the papers before the court, did raise this point when the matter was at CMAC level. The CMAC Executive Director made a ruling in which he pointed out that the respondent should have been cited as "TJL Greate Lac Investments (Pty) Ltd trading as Mr. Cheap Fabric Centre".

[18] The CMAC commissioner in the certificate of unresolved dispute however entered the name of the respondent only as TJL Greatelac Investments (Pty) Ltd, and omitted the words "trading as Mr. Cheap Fabric Centre" as directed by the Executive Director. That omission cannot be allowed to prejudice the applicant's case at this stage. In her application the applicant managed to cite the name of the respondent in full as TJL Greatelac Investments (Pty) Ltd t/a Mr. Cheap Fabric Centre. In any event, the complaint of the respondent is that its name has not been cited in full in the certificate of unresolved dispute, and not that the applicant cited the wrong party.

[19] The respondent further raised the point that the certificate of unresolved dispute has no issues in dispute and there is nothing to be determined by the court. This point has no merit as the certificate of unresolved dispute clearly states under paragraph 2.3 that the dispute remains unresolved. There is no requirement that claims arising from unresolved disputes be listed.

(See: SAMUEL FANYANA SIKHONDZE V. WILLIAM BARRY ROCHAT (IC) CASE NO. 19/2007).

[20] Taking into account all the above observations, the points in *limine* will be dismissed, and that is the order that the court makes.

There is no order as to costs.

NKOSINATHI NKONYANE

JUDGE - INDUSTRIAL COURT