

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 369/2007

In the matter between:

DAN NKONYANE

Applicant

and

SWAZILAND BEVERAGES LIMITED

Respondent

CORAM:

P. R. DUNSEITH : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA: MEMBER

FOR APPLICANT : N. DLAMINI

FOR RESPONDENT: P. DLAMINI

**RULING ON APPLICATION FOR
REFERRAL TO ARBITRATION -
19/11/07**

1. The Applicant has applied for his application under case No. 411/2007 to be referred to arbitration under the auspices of CMAC in terms of sections 85 (2) read with Section 8 (8) of the Industrial Relations Act 2000(as amended).

2. The application in Case No 411/2007 involves an unfair dismissal dispute, in which the Applicant claims reinstatement alternatively payment of terminal benefits and compensation amounting to a total of E52.547-76.

3. The Applicant alleges in the main application that his services were terminated because he reported a dispute to CMAC regarding unfair labour practices perpetrated by the Respondent. If this allegation is proved, the dismissal of the Applicant may be found to have been automatically unfair, entitling the Applicant to an award of up to 24 months wages as compensation.

4. The Respondent opposed the referral of the main case to arbitration, stating that it prefers to have the matter determined by the formal adjudication process of the Industrial Court. The Respondent alleges that complex issues of fact and law may arise in a matter involving allegations of automatically unfair dismissal. The amount claimed is also said to be substantial.

5. The Applicant's only motivation for wishing the matter to be referred to arbitration is that he anticipates unreasonable delay in the matter coming to trial before the Industrial Court.

6. On applying the principles spelled out in the cases of **Sydney Mkhabela v Maxi Prest Tyres (IC Case No. 29/2005)** and **Zodwa Gamedze v Swaziland Hospice at Home (IC Case No. 252/2002)**, I am not satisfied that this is the kind of matter where the Respondent should be denied adjudication by a court of law and compelled to submit to arbitration against its will.

7. The application is dismissed. There is no order as to cost.

PETER R. DUNSETH

PRESIDENT OF THE INDUSTRIAL COURT