

# IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 76/2009

In the matter between:

**NELLY NSIBANDE**

**APPLICANT**

and

**ENVIRO-SWAZI SCRAP METALS (PTY) LTD**

**RESPONDENT**

**CORAM:**

**S. NSIBANDE JOSIAH YENDE**

**PRESIDENT**

**NICHOLAS MANANA**

**MEMBER**

**MEMBER**

**MR. MAMBA MR.**

**FOR APPLICANT FOR**

**MANYATHI**

**RESPONDENT**

## **RULING ON APPLICATION FOR REFERRAL TO ARBITRATION**

**19/06/2009**

1. The Applicant has applied to the President of the Industrial Court for an order that her pending dispute against the Respondent be referred to arbitration under the auspices of the Conciliation Mediation & Arbitration Commission in terms of section 85 (2) (a) of the Industrial Relations Act 2000 ( as amended).
2. The Respondent opposes the application and submits that it prefers the more formal judicial approach because of the complexity and/or novelty of the legal issues requiring determination and also because the amount being claimed by the Applicant is substantial. Material disputes of fact and

law also arise in the pleadings.

3. In her main application the Applicant alleges that her dismissal was procedurally and substantially unfair. She further alleges that prior to her dismissal she was unlawfully suspended by the Respondent. She claims her terminal benefits, 12 months compensation for unfair dismissal and costs on a punitive scale.
4. Applicant's representative insisted that the issue arising for trial are simple and limited in scope. Having perused the pleading I do not agree.

The amount claimed is substantial (E33845.00). Both the procedural and substantive fairness of the dismissal is challenged. There are numerous disputes of fact including whether the Applicant was in fact dismissed.

5. On applying the principles spelled out in **Sydney Mkhabela v Maxi Prest Tyres (IC Case No. 29/2005)** I am not satisfied that this is the kind of matter where the Respondent should be compelled to submit to arbitration against its will.
6. The application for referral is dismissed. There shall be no order as to costs.



**S. NSIBANDE**

**PRESIDENT OF THE INDUSTRIAL COURT**