

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 455/09

In the matter between:

SIBUSISO MABUZA

Applicant

And

MEDICINE SAN FRONTIERS

Respondent

CORAM:

**S. NSIBANDE J. YENDE N.
MANANA
PRESIDENT**

**MEMBER
MEMBER**

**MR. MABUZA MR.
MTSHALI**

**FOR APPLICANT FOR
RESPONDENT**

RULING ON APPLICATION FOR REFERRAL TO ARBITRATION

2/12/09

1. The Applicant has applied to the President of the Industrial Court for an order that his pending matter against the Respondent be referred to arbitration under the auspices of CMAC as provided by Section 8 (8) and 85 (2) of the Industrial Relations Act 2000 (as amended).
2. The stated reasons for the application are that:
 4. The Applicant is suffering from tuberculosis and requires medical treatment which he is unable to afford by reason of unemployment.
 5. If the matter is heard by the Court it will take too long to be

determined because of the backlog of cases.

3. The Respondent opposes the application. Referring to the ruling of the Court President in the cases of **Zodwa Gamedze v Swaziland Hospice @ Home Industrial Court Case No. 252/2009** and **Sydney Mkhabela v Maxi Prest Tyres Industrial Court Case No. 29/2005**, the Respondent's representative set out the following factors which militate against the referral to arbitration:
 6. That Applicant is suffering from tuberculosis is not reason to refer the matter to arbitration because not only is the disease curable but it is also treated free of charge at government run T.B. Centres. The Respondent tenders to provide free treatment to the Applicant at any of its Centres.
 7. The amount claimed by the Applicant is E27.618.20 is substantial, regard being had to the status of Respondent, a charitable, non - profit, humanitarian organization.
 8. The issues in dispute require judicial assessment and reasoning. These include the question whether a party to a fixed term contract can claim maximum compensation for unfair dismissal or is restricted to claim the remainder of his contract.
- 3.4 The Applicant has not prosecuted the matter with due diligence in that even at the time the matter was argued no pre-trial conference had been held.
 - 3.5 The appointment of a third Judge in the Industrial Court will ensure that the backlog of cases is significantly reduced.
9. After perusing the pleadings and the affidavit filed of record by the parties, I am of the view that the dispute raises a number of fairly tricky issues for determination, inter alia, whether the Applicant was previously disciplined for the same offence, whether the purported warnings he had were valid; whether Applicant committed the offence for which he was dismissed, whether dismissal was an appropriate sanction in all the circumstances and whether the disciplinary process was procedurally fair.

10. In my view these issues can best be adjudicated in the more formal process of the Industrial Court.

The disputes of facts herein will depend on issues of credibility of witnesses and any wrong finding herein can not be cured by an appeal, an appeal being allowed only on issues of law.

6. In the **Sydney Mkhabela v Maxi Prest Tyres Industrial Court Case No. 29/2005**, Dunseith P. (as he then was) indicated his reluctance to override the objection of a party to compulsory arbitration in an unfair dismissal dispute, particularly where the claim is substantial. I align myself with those sentiments. The claim in this matter is substantial, regard being had to the fact that the Respondent is a charitable non profit humanitarian organization.
7. In the circumstances the application for referral is refused. The matter is referred to the Registrar for allocation of trial dates.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT