



**IN THE INDUSTRIAL COURT OF SWAZILAND**

**RULING**

Case NO. 569/13

In the matter between:

**MUSA SHONGWE**

**Applicant**

And

**MAC'S INVESTMENTS (PTY) LTD t/a  
EASIGAS CENTRE SWAZILAND**

**Respondent**

**Neutral citation:**        *Musa Shongwe v The Mac's Investments (Pty) Ltd t/a  
Easigas Centre Swaziland (569/13) [2014] SZIC 8  
(February 2014)*

**Coram:**                    NKONYANE J,  
*(Sitting with G. Ndzinisa & S. Mvubu  
Nominated Members of the Court)*

**Heard submissions :**    **21 FEBRUARY 2014**

**Ruling delivered :**     **07 MARCH 2014**

**Summary:**

**The Applicant was found guilty of dishonesty by a disciplinary hearing chairperson. The chairperson made a recommendation to the employer that the applicant be dismissed with notice. The employer did not follow the recommendation, instead the employer dismissed the Applicant summarily. The Applicant filed an application before the court claiming payment of the notice to him as per the recommendation of the chairperson. The Respondent raised a point of law that the matter was not properly before the court as it was not brought under the provisions of Part V111 of the Industrial Relations Act which requires that a dispute be referred to CMAC before being brought to court.**

**Held—The present application raises a question of law only for the court to determine, it is therefore an exception to the requirement that a matter will not be entertained by this court unless a certificate of unresolved dispute is attached. The point of law raised dismissed accordingly.**

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**RULING ON POINT OF LAW RAISED  
07.03.14**

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[1] The Applicant is a former employee of the Respondent. He was dismissed by the Respondent by letter dated 21<sup>st</sup> February 2013. At the time of his dismissal he was occupying the position of Administration Officer.

[2] The Applicant was dismissed following the findings of a disciplinary hearing in which the chairperson found him guilty of dishonesty. After the finding of guilty, the chairperson made a recommendation to the

Respondent that the Applicant be terminated with notice. The Respondent however decided that it would terminate the Applicant's service summarily and did not follow the recommendation of the disciplinary hearing chairperson.

[3] The Applicant appealed and the appeal chairperson confirmed the decision of the disciplinary hearing chairperson.

[4] The Applicant has now applied to the court for an order in the following terms:

*“1. Ordering and/or directing the Respondent to pay Applicant the sum of Twenty Thousand Seven Hundred and Sixty Emalangeni (E20 760-00) in lieu of notice.*

*2. Costs of this application.*

*3. Further and/or alternative relief.”*

[5] The Applicant's application is opposed by the Respondent. An Answering Affidavit was duly filed deposed thereto by a certain Andre Botha who stated therein that he is the General Manager of the Respondent. The crux

of the Respondent's opposition to the Applicant's application is that the disciplinary hearing chairperson was required to make a recommendation which the Respondent was at liberty to accept or reject.

- [6] The Applicant thereafter filed his replying affidavit in which he denied that the Respondent was at liberty to accept or not to accept the recommendation of the disciplinary hearing chairperson.
- [7] The Respondent on 29<sup>th</sup> November 2013 filed a notice to raise a point of law. The court is therefore presently only called upon to make a ruling on the point of law raised.
- [8] The point of law raised by the Respondent is that this court has no jurisdiction to entertain the present application as it was not first reported to the Conciliation, Mediation and Arbitration Commission (CMAC).
- [9] On behalf of the Applicant it was argued that the Applicant was not bound to report a dispute at CMAC before approaching the Court for the relief sought because the issue before the court involves a question of law only, and therefore exempted from the dispute resolution process obtaining at CMAC. It was argued that the point of law that the court has to decide is whether an employer is bound by the decision of the chairperson of a disciplinary hearing.
- [10] Indeed, the Industrial Court does not ordinarily entertain matters that have not been conciliated on and a certificate of unresolved dispute issued if the conciliation failed to yield positive results. There are however exceptions to this rule, for example, urgent applications and applications in which the

court has to deal with a question of law only. This is in terms of **Rule (14) (6) (b)** which provides that;

*“in the case of an application involving a dispute which requires to be dealt with under Part VIII of the Act, a certificate of unresolved dispute issued by the Commission, unless the application is solely for the determination of a question of law.”*

[11] We agree with the Applicant that the sole question to be determined by the court in the present proceedings is whether the Respondent was bound by the recommendation of the disciplinary chairperson.

[12] The point of law raised is accordingly dismissed with costs. The matter is referred to arguments on a date to be agreed upon by the parties. The parties are directed to file Heads of Argument to reach the court at least a day prior to the date to be set for arguments.

The members agree.

**N. NKONYANE**

**JUDGE OF THE INDUSTRIAL COURT OF SWAZILAND**

**FOR APPLICANT: MR. ALEX FAKUDZE**  
**(LABOUR LAW PRACTITIONER)**

**FOR RESPONDENT: MR. D. MABUZA**  
**(LABOUR LAW PRACTITIONER)**