



**IN THE INDUSTRIAL COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 162/2014**

In the matter between:

**PHILANI MDLULI**

Applicant

And

**P.D.S INVESTMENTS (PTY) LTD**

Respondent

**Neutral citation:** *Philani Mdluli v P.D.S Investments(Pty) Ltd (162/2014)*  
*[2017] SZIC 114 (October 25, 2017)*

**Coram:** N. Nkonyane J  
(Sitting with G. Ndzinisa and S. Mvubu)  
(Members of the Court)

**Heard submissions:** **17/10/2017**

**Delivered Ruling:** **25/10/2017**

**SUMMARY---Labour Law---Applicant applying for referral of dispute to arbitration---Factors to considered---whether dispute involve complex factual and legal questions.**

**Held---There are no complex factual and legal issues arising for determination---Dispute accordingly referred to arbitration under the auspices of CMAC.**

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**RULING ON APPLICATION  
FOR REFERRAL TO ARBITRATION**

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1. The Applicant is an adult Swazi male of Mahwalala area in the Hhohho Region. The Respondent is a limited liability company duly incorporated in terms of the Company Laws of the Kingdom of Swaziland having its principal place of business at Sidwashini Industrial Site in Mbabane.
  
2. The Applicant was employed by the Respondent as a Driver in October 2000 and remained in continuous employment until 19<sup>th</sup> June 2013 when he stopped working for the Respondent. The Applicant stopped

- working for the Respondent when he tendered a letter of resignation on grounds of constructive dismissal by the Respondent.
3. The Applicant also stated in his statement of claim that the Respondent forced the Applicant to sign a fixed term contract and also failed to pay sleep-out or subsistence allowance when the Applicant was working out of the country.
  4. The Respondent in opposition to the Applicant's application filed its Reply and denied the allegations made by the Applicant.
  5. The matter is presently awaiting allocation of trial dates by the office of the Registrar. The Applicant has now invoked the provisions of **Rule 18** of the **Industrial Court's Rules** which provides that a party may apply to the President for a direction that any pending application be referred to arbitration under the auspices of the Conciliation, Mediation and Arbitration Commission (CMAC). Rule 18 (2) specifically provides that;  
  
*“The application shall be made on notice to all parties, explicitly stating the reasons for the referral.”*
  6. In casu, the Applicant did state his reasons in support of the application in the founding affidavit.
  7. Before the Court it was argued on behalf of the Applicant that;

- 7.1 *The dispute between the parties is not complex.*
- 7.2 *The Commission has experienced legal practitioners who can easily handle the factual and legal issues involved.*
- 7.3 *The issue for determination is simple, that is, did the Respondent's conduct amount to constructive dismissal.*

8. On behalf of the Respondent it was argued to the contrary that;

- 8.1 *The dispute involves a number of complex factual issues to be resolved.*
- 8.2 *The relationship between the parties is acrimonious; the dispute ought to be handled by an experienced judicial officer.*
- 8.3 *The amount claimed is substantial.*
- 8.4 *The dispute will be better handled by the Court wherein the Judge sits with members whereas at arbitration the arbitrator sits alone.*

9. The dispute involves issues of constructive dismissal. This Court has dealt with numerous cases of constructive dismissal. There is therefore precedence which can serve as a guide to any person handling the dispute. The issues do not raise any new or novel questions of law

where the Court would be expected to make a judgement that would create a precedence.

10. The Respondent argued that the amount claimed is huge. The Applicant is claiming payment for the remainder of the fixed term contract. Whether the Applicant is entitled to this claim or not is dependent on whether or not the trier of facts finds that he was constructively dismissed. That enquiry is not a complex one taking into account the statements in the pleadings before the Court.
11. Having read the Applicant's application and the Respondent's Reply, I come to the conclusion that there are no complex factual or legal issues raised by the present dispute between the parties. The present application is a deserving matter for referral to arbitration. I will accordingly make the following order;
  - a) The dispute is referred to arbitration under the auspices of CMAAC.
  - b) There is no order as to costs.

A handwritten signature in black ink, consisting of a circular initial 'NN' followed by a stylized surname.

N.NKONYANE

JUDGE OF THE INDUSTRIAL COURT OF SWAZILAND

*For Applicant:*

*Mr. S.A. Lokothwayo*

*(Attorney from M.H. Mdluli Attorneys)*

*For Respondent:*

*Mr. E.B. Dlamini*

*(Labour Law Consultant)*