



**IN THE INDUSTRIAL COURT OF ESWATINI**

Case No. 97/18

In the matter between:

**BONGANI MAVUSO**

Applicant

**And**

**LECHWELIGHT PRIMARY SCHOOL**

Respondent

**Neutral citation:** Bongani Mavuso v Lechwelight Primary School (97/2018)  
[2018] SZIC 104 (04 October 2018)

**Coram:** **S. NSIBANDE JP**

(Sitting with Nominated Members of the Court Mr N. Manana  
and Mr M. Dlamini)

**Heard:** 27 September 2018

**Delivered:** 04 October 2018

## RULING

- [1] The Applicant herein has approached the Court for an order directing that his unresolved dispute with Respondent that is currently pending before this Court be referred to arbitration under the auspices of the Conciliation, Mediation and Arbitration Commission (CMAC).
- [2] He alleges he was unfairly retrenched by Respondent following that his position was made redundant. He considers himself to have been unfairly dismissed and that his termination was procedurally and substantively unfair. He claims 12 months wages as compensation for unfair dismissal in the sum of E40 800.
- [3] Applicant applies for the referral of the unresolved dispute on the basis that
- (i) there are no complicated legal issues arising from his claim;
  - (ii) the claim is not substantial.
- [4] The application for referral is opposed and the Respondent argued that the matter is fraught with a number of factual disputes; that there are now five (5) judges in the Court thus the issue of the backlog of cases is being adequately addressed; that the amount sought is substantial for the Respondent which is a

private primary school with limited resources; and that the right to appeal is curtailed in arbitration proceedings thus the potential for prejudice against the Respondent. It was also argued on behalf of the Respondent that the matter had already been heard by the Court and that therefore the Court was best placed to continue with the matter. The caliber and qualifications of arbitrators was also put in issue by the Respondent.

[5] The Applicant's claim for unfair dismissal is based on unfair retrenchment arising from his position being declared redundant. He questions the rationale for the redundancy and the employer's conduct after he had been retrenched.

[6] In my view that factual issue arising from the retrenchment can not be so complicated as to make this matter unsuitable for arbitration. The facts are mostly common cause and the law regarding retrenchments/redundancies has been settled. A consideration of the following cases will give guidance to an arbitrator dealing with a matter of this nature; **Phyllis Phumzile Ntshalintshali v Sedco IC Case No. 88/2004; Edith Nxumalo v The Federation of Swaziland Employers IC Case No. 108/2002; Lonhlanhla Masuku v KK Investments IC Case No. 341/2003.** The dispute between the parties does not raise a novel issue.

[7] The Court has previously expressed its reluctance to send a party to compulsory arbitration where the amount claimed is substantial. The prejudice herein lay in the fact that there was no requirement for an arbitrator to have formal legal qualifications. A wrong factual finding would be prejudicial to the Respondent because there is no appeal on facts available. However the position has changed as set out in the **“The attitude of the Industrial Court on Labour Arbitration Referrals by Nathi Gumede 4<sup>th</sup> July 2012”**. In terms of the above article CMAC arbitrators now hold LLB degrees as a minimum qualification. That position now means that the potential prejudice of a party being ordered to go to compulsory arbitration is now limited due to the qualifications and experience of the cadre of CMAC arbitrators.

[8] On the matter having been heard in part, by the Court it is clear that the merits of the matter were not considered. What the Court considered was whether the dispute had been reported on time. Nothing arises from the hearing of the points of law that bars the matter from being referred to arbitration. Further the issue of the backlog of cases in the Court remains a fact despite the addition of acting judges.

[9] In the circumstances I make the following order:

- 1. The matter is referred to arbitration under the auspices of CMAC.**
- 2. The Executive Director of the CMAC is directed to appoint an arbitrator who is an attorney with at least 7 years post admission experience in Labour Law matters for arbitrator in this matter.**
- 3. Each party to pay its own costs.**



**S. NSIBANDE**

**PRESIDENT OF THE INDUSTRIAL COURT**

**For the Applicant:** Mr E.B. Dlamini

**For the Respondent:** Mr M.E. Simelane