



IN THE INDUSTRIAL COURT OF ESWATINI

JUDGMENT

Case No. 616/2014

In the matter between:

ZANELE MASINGA LUPHONDVO

Applicant

And

NUTRI STAHL COOKWARE

Respondent

Neutral citation: Zanele Masinga Luphondvo v Nutri Stahl Cookware [2018]
SZIC 80 (18 July 2018)

Coram: **S. NSIBANDE J.P**

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

Date Heard: 04 July 2018

Date Delivered: 18 July 2018

JUDGMENT

- [1] This is an opposed application for the referral of an unresolved dispute between the parties, to the Conciliation, Mediation and Arbitration Commission (CMAC) for arbitration.
- [2] The Applicant argued that the matter should be referred to CMAC for arbitration because the issues for determination are not very complex; the amount claimed is minimal; the matter will be resolved quicker at CMAC than in the Courts because of the backlog of cases thus prejudicing applicant who remains unemployed; and that there will be no prejudice to the Respondent if the matter is referred to arbitration.
- [3] The Respondent opposes the application on the basis that the issues in dispute are complex and require factual issues to be examined extensively; that the amount claimed is substantial; that issues of constructive dismissed are novel issues that require the more formal judicial determination by the Court; and that the Respondent will be prejudiced by a referral to CMAC.
- [4] The Applicant claims that she was unfairly dismissed by the Respondent, when she was forced to resign her employment as a result of Respondent's action towards her at the workplace. She alleges that several incidences took

place that made it clear that she was being constructively dismissed by the Respondent.

- [5] Cases of constructive dismissal are not novel cases. This Court has delivered a number of judgements in respect of constructive dismissal claims that are instructive on the elements thereof and can guide an adjudicator tasked with the duty to decide such a matter.

See: **1. Timothy Makhathu v JD Group of Companies (ICA Case No. 37/01)**

2. Paul Lincoln Ngarua v Swaziland Government (IC Case No. 88/03)

- [6] The case of **Sydney Mkhabela v Maxi-Prest Tyres IC Case No. 29/2005** sets out the factors that the President must consider in exercising his discretion whether a matter ought to be referred to arbitration. Each case, it is said will depend on its own peculiar facts.

- [7] Looking at the particular facts of this matter, it appears to me that there are numerous disputes of fact that will arise regarding the circumstances that led to the Applicant's resignation. Secondly, the Applicant's claim in the sum of E89684.20 (Eighty-nine thousand six hundred and eighty-four Emalangeni twenty-cents), is substantial. In the circumstances an adverse outcome herein

would have grave consequences for the Respondent, which would have no right of appeal against adverse findings of fact.

[8] In the circumstances I am not persuaded that this matter should be referred to arbitration. As Dunseith J.P. said in **Zodwa Gamedze v Swaziland Hospice at Home IC Case No. 252/2005**. “**The potential prejudice of a referral to arbitration arises from one party being deprived *against its will* from access to a Court of a law for determination of the dispute.**”

[9] I am not satisfied that the Respondent will not be unduly prejudiced if disadvantage of this matter is referred to arbitration.

[10] **In the premises the application is for referral is dismissed.**

There is no order as to costs.

The members agree.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For Applicant: Ms. Ngcamphalala

For Respondent: Mr. M. Sithole