



IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 339/2018

In the matter between:

SIBUSISO KUNENE

Applicant

And

NDZ CONSULTING COMPANY

Respondent

Neutral citation: Sibusiso Kunene v NDZ Consulting Company [2020] SZIC 118 (31 January 2020)

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

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

Date Heard: 03 July 2019

Date Delivered: 31 January 2020

RULING

[1] This is an application for the referral of an application for the determination of an unresolved dispute that is pending before this Court, to arbitration under the auspices of CMAA.

[2] The Respondent filed an intention to oppose the application for referral but did not file any further papers. It did not appear on the 8th of July 2019 when the matter was to be argued, despite that Mr M. Nsibande was on record as standing in for Mr Mahlalela for the Respondent when the matter was called on 24th June 2019 and subsequently postponed to the 8th July. On that basis the Applicant was heard on 8th July when the matter was called.

[3] The Applicant submitted that the matter should be referred to arbitration because it is not a complex one, nor is the amount sought substantial and the backlog of pending cases will prevent the matter from being heard speedily and within a reasonable time.

[4] The Applicant claims a total sum of E45 464.50 being in respect of what he terms “the total gross monthly salary the Applicant would have earned in those remaining 17 months.” He claims to have been subjected to an unfair labour

practice by the Respondent who effectively terminated his contract of employment prematurely.

[5] In the main application in its Replies, the Respondent avers that Applicant's dismissal was procedurally and substantively fair and reasonable in the circumstances of the matter. It avers that the Applicant took part in an illegal unprotected industrial action and further refused to heed an instruction to return to work.

[6] My assessment of the Applicant's submissions and the pleadings in the main application lead me to the conclusion that there will be a number of complex disputes of facts that may arise in this matter. Further, I am of the view that there are complexities with regard to the law in respect of the Applicant's claim for a balance of his gross salary for the remaining years of the prematurely terminated contract of employment.

[7] It is my finding therefore that the balance of equity favours that the matter be heard in the more formal structure of a Court hearing and militates against the matter being referred to arbitration.

[8] In the premises the application is dismissed.

There is no order as to costs.

A handwritten signature in black ink, appearing to read 'S. Nsibande', is written over a light blue rectangular background.

S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For Applicant: Mr. J. Mahlindza (BC Dlamini Attorneys)

For Respondent: Not before Court (Madzinane Attorneys)