IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 222/2019

In the matter between:

VINCENT SENZENI MASUKU Applicant

And

HI PRESS INVESTMENT Respondent

Neutral citation: Vincent Senzeni Masuku v Hi Press Investment [2019] [22/2019] [2020] SZIC 42 (30 April 2020)

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

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

Date Heard: 24 October 2019

Date Delivered: 30 April 2020

RULING

[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 based his application for referral on the following points which he set out in the affidavit supporting his application:

2.1 that the issues for determination are not complex;

2.2 that the arbitrators at CMAC are admitted attorneys with vast experience in Labour Law and would be able to deal with this matter;

2.3 that the amount sought is not substantial considering the type of business the Respondent is engaged in; and

2.4 that the Respondent will not suffer any prejudice if the matter is referred to arbitration.

[3] In argument, the Applicant submitted that the issue for determination was crisp and had to do with whether the Respondent had complied with **Section 40 of the Employment Act** in retrenching him and that no complex issues or disputes of fact stood to arise from the matter. Secondly it was argued that the amount of E238 000 claimed by the Applicant was not substantial regard being had for the business of the Respondent.

[4] As indicated above, the Respondent opposed the application. It argued in the opposite submitting that the issues arising from the unresolved dispute are complex and fraught with complex disputes of fact; that the amount sought was substantial and that the nature of the claim being for automatically unfair dismissal required the more formal structure of a court of law.

[5] The Applicant claims that his dismissal was substantively and procedurally unfair. He claims an amount of E223704.00 for automatically unfair dismissal. He also claims an amount of E14299.20 being payment of his overtime over a 36 month period. Consequently, he claims a total amount of E238003.20 (Two hundred and thirty Eight thousand and three Emalangeni twenty cents) on the basis that he was unfairly dismissed under the guise of redundancy.

[6] Applicant alleges that he was asked, by his fellow employees, to lodge a grievance with the employer. The grievance was in respect of; (i) the non-remittance of SNPF contributions to the Fund when they were, in fact, deducted from employees; and (ii) the non-payment of overtime worked on Saturdays.

He accordingly lodged the grievance with the employer who acknowledge same and promised to attend to it. Following his continued following ups on the grievance, Applicant alleges, he was then informed that his position had

become redundant. There was no proper consultation prior to the retrenchment. He was the only employee retrenched and his position was subsequently taken by another employee. He considers that his dismissal was automatically unfair because it came about after he had filed, in good faith, a grievance on behalf of his fellow employees in his capacity as their supervisor.

[7] The Respondent denies that the Applicant was dismissed under the guise of redundancy. The Respondent firstly denies that Applicant had been employed as a Mechanical Engineer but avers that he was a Fitter and Turner. It avers that the position of Fitter and Turner became redundant in September 2018 due to shrinkage in customers. It alleges that Applicant was consulted fully and objectively to the extent that he admitted that business was very slow. It denies that the raising of the grievances had anything to do with Applicant's redundancy.

[8] I have considered the facts of this matter and it appears to me that there may be some disputes of fact that arise in the course of the trial. The Respondent's employment position is disputed. Respondent avers that the fitting and turning department was abolished and remains abolished and that Applicant was consulted fully and objectively. While these disputes of fact may not ordinarily be complex on their own, when viewed with the substantial nature of

the Applicant's claim, I am not convinced that a referral to arbitration will not prejudice the Respondent. An adverse finding of fact cannot be appealed against. It would be prejudicial to close the doors of the Court to the Respondent against its will where it faces a substantial claim and when there are potentially complex disputes of fact against which it would not be able to appeal, were there to be a finding against it.

[9] Having considered the particular circumstances of this matter and for the reasons set out above I come to the conclusion that this matter is not one suitable for referral to arbitration. Consequently the application for referral application is dismissed. I make no order as to costs.

S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For Applicant: Mr E.B. Dlamini (Ephraim Bongani Dlamini)
Labour Law Consultant

For Respondent: Ms. S. Shongwe (Simelane Mtshali Attorneys)