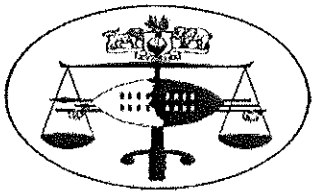

IN THE INDUSTRAIL COURT OF ESWATINI

RULING

CASE NO: 244/22

In the matter between:

MBONGENI MATHABELA **APPLICANT**

AND

UMBULUZI VALLEY SALES (PTY) LTD **RESPONDENT**

Neutral citation: Mbongeni Mathabela v Umbuluzi Valley Sales (Pty) Ltd [244/22] [2023] SZIC 126 (07 December 2023)

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

Heard: 23 NOVEMBER 2023

Delivered: 07 DECEMBER 2023

JUDGMENT

[1] The applicant had applied to the President of the Industrial Court for the referral of the unresolved dispute, currently pending before Court between himself and the respondent, to arbitration under the auspices of the Conciliation Mediation and Arbitration Commission (CMAC) in terms of **Section 85 (2)** of the **Industrial Relations Act 2000 as amended.**

[2] At the hearing of the application Mr S. Zwane who had previously appeared for the respondent (on 10th August 2023) did not appear. He had previously not appeared on 17th and 31st August 2023. The applicant duly set the application down for hearing on 23rd November 2023 and served the respondents attorneys of record S.K. Dlamini Attorneys) timeously. The applicant's representative applied for the application to be heard regard being had to the fact that the matter had been properly set down and respondent's absence was not explained.

[3] Despite that there was no appearance by or on behalf of the respondent, it remains my duty to "*weigh the benefits if robust justice by way of*

CMAC arbitration against the benefits of a more formal judicial determination by the Industrial Court in the scales of fairness and equity," (Per Dunseith JP in **Sydney Mkhabela v Maxi Prest Tyres Industrial Court Case No. 29/2005)**.

[4] The reasons advanced by the applicant for the referral application include that:

4.1 the matter is likely to be heard more expeditiously at CMAC than the Court;

4.2 the matter is not complex and the arbitrators at CMAC are admitted attorneys with vast experience in labour matters;

4.3 the amount claimed is E33050.00 (thirty three thousand and fifty Emalangeni) and such amount is not substantial; and

4.4 the respondent shall not suffer any prejudice if the matter is referred to arbitration.

[5] In the original application for the determination of an unresolved dispute the applicant claimed that he was employed by the respondent on 3rd February 2020 and remained in the continuous employ of the respondent until 5th January 2022. He alleges he was unfairly dismissed

following that after three months of employment he was changed from permanent employment to fixed-term employment. He alleges that his second fixed-term contract was to run from 31st January 2021 to 30th January 2023 but he was subsequently dismissed without appearing before a disciplinary hearing. He had not committed any offence to warrant his dismissal by the respondent, he alleged. His appeal of 5th May 2022 yielded no result as he was not called to an appeal hearing.

[6] The Applicant claims a sum of E33050.00 (thirty three thousand and fifty Emalangeni) in respect of his terminal benefits, ration allowance and twelve months compensation for unfair dismissal.

[7] The respondent denies that the applicant was dismissed but avers that his contract of employment came to an end thus it was terminated by exfluxion of time. It denies that the applicant is entitled to any of the amounts he claims.

[8] It appears to me that this is a straight forward matter with no complicated factual or legal matrix. It is correct that an adverse finding of fact may be prejudicial to the respondent because there is no appeal on the facts

available to it. However the positive changes set out by **Nathi Gumede** in his article of 4th July 2012 entitled, **'The Attitude of the Industrial Court on Labour Arbitration Referrals'**, means that the potential prejudice of a party being ordered to compulsory arbitration is now limited due to the improved qualifications, quality and experience of the cadre of CMAC arbitrators.

[9] In the circumstances, it is my view that this matter is one that ought to be referred to arbitration. I therefore make the following order:

1. **The matter is referred to arbitration under the auspices of CMAC.**
2. **Each party is to pay its own costs.**

S. NSIBANDE
PRESIDENT OF THE INDUSTRIAL COURT OF ESWATINI

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

For Respondent: Mr. S.K. Dlamini Attorneys (No appearance)