



IN THE INDUSTRIAL COURT OF SWAZILAND

Case NO. 69/17

In the matter between:

NTOMBIFUTHI F. MAGAGULA

Applicant

And

RUN IN FIRE GARDEN COURT

Respondent

*Neutral citation: Ntombifuthi F. Magagula v Run In Fire Garden Court
(69/2017) [2017] SZIC 106 (October, 2017)*

Coram: Nkonyane J,
(Sitting with G. Ndzinisa and S. Mvubu Nominated
Members of the Court)

Date Heard: 13/10/17

Date Delivered: 17/10/17

*SUMMARY---Labour Law---Application for referral of dispute to arbitration---
Discretion of the President of the Industrial Court---Factors to be taken into
account---Complexity or simplicity of the legal and factual issues involved---
Total amount claimed.*

*Held---The factual and legal issues arising not so complicated as to require the
robust and formal procedures of the Court---Application for referral
accordingly granted.*

**RULING ON APPLICATION FOR REFERRAL TO ARBITRATION
17.10.17**

- [1] The Applicant is an adult Swazi female person of Dvokolwako area in the Manzini District.
- [2] The Respondent is a company that is duly registered in terms of the Company Laws of the Kingdom of Swaziland.
- [3] The Applicant was employed on by the Respondent on 04th January 2016 as a Bar Attendant. She remained in continuous employment until 30th July 2016 when she was dismissed by the Respondent. The

Applicant did not accept the dismissal. She claims that it was unlawful and unfair. She therefore reported the matter to CMAC as a dispute. The dispute could not be resolved by conciliation and a certificate of unresolved dispute was issued by the Commission.

[4] The Applicant thereafter filed an application for determination of the unresolved dispute before this Court in terms of **Section 85 (2)** of the **Industrial Relations Act No. 1 of 2000** as amended as read with **Rule 7** of this Court's Rules. The Applicant's application was opposed by the Respondent on whose behalf a Reply was filed. Thereafter the matter was referred to the Registrar's office for trial dates allocation.

[5] The matter has not yet been allocated a trial date. The Applicant has now instituted the present proceedings on Notice and is seeking an order in the following terms;

a) *“That the above matter be referred back to Arbitration under the auspices of the Commission in terms of Section 85 (2) of the Industrial Relations Act of 2000 as amended.*

b) Further and alternative relief.”

[6] The Respondent was served with this application through its Attorneys of record on 22nd August 2017. From the Court record, there is no answering affidavit that was filed in opposition to the application.

[7] The application was filed in terms of **Rule 18 (1) and (2)** which provides that;

(i) *“A party may apply to the President for a direction that a pending application be referred to arbitration under the auspices of the Commission.*

(ii) *The application shall be made on notice to all other parties, explicitly stating the reasons for the referral.”*

In keeping with the requirements of **Rule 18 (2)** the Applicant stated her reasons for the referral in the founding affidavit as follows:-

“ 9. *I wish to submit that the matter could easily be dealt with through arbitration under the auspices of CMAC as the issues involved are narrow and not complex that they could not be dealt with in arbitration.*

10. *It is my humble submission that CMAC was established for speedy resolution of conflicts and hence this matter is one that needs a speedy resolution.*

11. *The amount claimed is not substantial that it cannot be dealt with in arbitration.”*

[8] I had the opportunity to peruse all the pleadings herein. I agree with the Applicant’s argument that the issues for determination are narrow and not complex. Further, the amount claimed is not substantial. I therefore have no doubt in my mind that the Respondent will not suffer any prejudice if the dispute is referred to arbitration.

[9] Taking into account all the circumstances of this case, the interests of justice and fairness, I will make the following order;

- a) The dispute is referred to arbitration under the auspices of CMAAC.
- b) There is no order as to costs.

A handwritten signature in black ink, consisting of a circular loop on the left and a series of connected strokes extending to the right.

N.NKONYANE

JUDGE OF THE INDUSTRIAL COURT OF SWAZILAND

FOR APPLICANT: MR. M. MKOKO
(LABOUR LAW CONSULTANT)

FOR RESPONDENT: NO APPEARANCE