



IN THE INDUSTRIAL COURT OF ESWATINI

Case No. 211/18

In the matter between:

THOBILE NIKIWE MTHIMKHULU

Applicant

And

M & Q SERVICES (PTY) LTD

Respondent

Neutral citation: Thobile Nikiwe Mthimkhulu v M & Q Services (Pty) Ltd
(211/2018) [2018] SZIC 103 (03 October 2018)

Coram: **NSIBANDE S. JP**

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

Heard: 26 September 2018

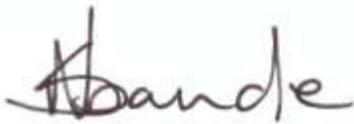
Delivered: 03 October 2018

RULING

- [1] The Applicant seeks an order that the unresolved dispute between herself and the Respondent that is currently pending before Court be referred 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] In the application for the determination of an unresolved dispute the Applicant claims payment for the remainder of her employment contract being seven months wages/salary amounting to the sum of E10 500.00. She bases her claim of what she terms as the unfair termination of her employment.
- [3] The Applicant states that the termination of her employment was both procedurally and substantively unfair because the reason for terminating the employment contract (unsatisfactory work performance) had never been raised during her probation period nor had her performance been negatively reviewed. In any event, Applicant submits, she continued to work for the Respondent even after the probation period had ended.

- [4] In the current application, the Applicant seeks to have the matter referred to CMAC on the basis that the factual issues involved are not particularly complex nor is the claim sought a substantial one.
- [5] The Respondent did not file any papers in opposition to the application for referral of the unresolved dispute to CMAC. Be that as it may it is the duty of the President of the Industrial Court to consider whether the matter is one suitable to be decided by the less formal process of arbitration or by the formal process of the Industrial Court.
- [6] The facts of this matter appear to be common cause and in my view are not complex at all. They are in fact fairly straightforward. The amount of the claim is also, in my view, not substantial. The Respondent stands to suffer little or no *prejudice* by the matter being referred to arbitration particularly because in my view the issues that may arise from arbitration are most likely legal issues and not factual ones, the facts being largely common cause. The Applicant would be able to appeal on those legal issues should it need to.
- [7] In the circumstances I find that this matter is one suited to be referred to arbitration by CMAC and make the following order:

- (i) **The unresolved dispute between the parties is hereby referred to arbitration under the auspices of CMAC.**
- (ii) **There is no order as to costs.**



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For the Applicant: Mr T. Simelane

For the Respondent: No appearance