



IN THE INDUSTRIAL COURT OF ESWATINI

JUDGMENT

Case No. 190/16

In the matter between:

NTOMBIZODWA VILAKTI

Applicant

And

CHOWTOWN (PTY) LTD T/A

GALITOS MBABANE

Respondent

Neutral citation: Ntombizodwa Vilakati v Chowtown (Pty) Ltd t/a Galitos Mbabane
(190/2016) [2018] SZIC 70 (13 July 2018)

Coram: NSIBANDE JP

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

Heard: 02 May 2018

Delivered: 13 July 2018

JUDGMENT

- [1] The applicant seeks an order directing that her unresolved dispute with the respondent be referred to arbitration under the auspices of CMAC. The application is based on the contention that the matter presents no complication and is one suited for arbitration and that the compensation sought is not substantive.
- [2] The application is opposed and the respondent contends that the matter is complex and will require oral evidence on highly contested issues. Further that it is entitled to have the matter heard and determined at a forum of its choice and should not be compelled to compulsory arbitration against its will.
- [3] The applicant claims she was unfairly dismissed by the Respondent both procedurally and substantively in that;
- 3.1 She was taken through a disciplinary hearing in which she pleaded not guilty to all charges;
- 3.2 At the end of the hearing there was no verdict nor sanction;
- 3.3 While awaiting the verdict, the chairperson of the disciplinary enquiry called her, wrote a resignation letter on her behalf and asked her to read, sign same and take it to the office because they wanted to fire her;

3.4 She read the letter, did not sign it and did not take it to the office but kept it as she had no intention of resigning from work;

3.5 She attended work on 21st March 2016 as she had not been suspended but was verbally told by her manager that she should go home because she had resigned. Thus she was dismissed.

[4] The respondent denies these allegations and states that the applicant resigned to frustrate the disciplinary enquiry and that there was no verdict or sanction because of the resignation.

[5] After pressing the pleadings and affidavits filed of record I am of the view that the dispute turns of whether the applicant resigned or not and whether the chairman of the disciplinary enquiry drafted a letter of resignation and asked applicant to sign same. In my view while these questions may be tricky, they are capable of being adjudicated upon an arbitrator. I am persuaded that the claim is not substantial and that an arbitrator with the requisite experience would effectively sure any potential prejudice that respondent stands to suffer. I am satisfied that here demand will be no compromise of the required standards of fair adjudication of this dispute is referred to arbitration by an experience arbitrator.

[6] In the premises and having regard to the particulars of this case the application for referral of the dispute to arbitration by CMAC is granted. The Executive Director of CMAC is directed to appoint an attorney of 5 years post admission experience in labour law as an arbitrator in this dispute.

There is no order as to costs.



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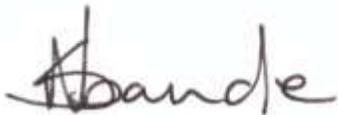
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S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For the Applicant: Mr M. R. Ndlangamandla

For the Respondent: Mr S.S. Mnisi Attorneys