



**IN THE INDUSTRIAL COURT OF ESWATINI**

**JUDGMENT**

Case No. 537/2007

In the matter between:

**SIBUSISO MATSENJWA**

Applicant

And

**TOEPFER & SONS CONSTRUCTION**

Respondent

**Neutral citation:** Sibusiso Matsenjwa v Toepfer & Sons Construction [2018]  
*SZIC 79* (17 July 2018)

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

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

**Date Heard:** 08 June 2018

**Date Delivered:** 18 July 2018

## JUDGMENT

- [1] The Applicant is a former employee of the Respondent. He was employed by the Respondent as a Storeman on or about 23<sup>rd</sup> November 2000 until 12<sup>th</sup> May 2007 when his services were terminated by the Respondent.
- [2] Being aggrieved by his dismissal Applicant reported a dispute at the Conciliation, Mediation and Arbitration Commission (the Commission). The dispute could not be resolved after Conciliation and he filed an application for the determination of the unresolved dispute before this Court. The application was opposed by the Respondent which denied that it had unfairly dismissed the Applicant. Respondent in its Reply contented that the Applicant absconded from work.
- [3] The Applicant has now filed an application for referral of the dispute to arbitration under the auspices of the Commission.
- [4] In support of the application the applicant's representative argued on his behalf that:
- 4.1 the amount claimed is meagre being E26 512.00 (twenty-six thousand five hundred and twelve Emalangeni);
- 4.2 the issue for determination are not so complex to require that it be heard by the Court;

4.3 the Commissions arbitrators are now qualified legal practitioners to assist this Honourable Court reduce the backlog of cases by providing a speedy resolution mechanism of conflicts in labour relations.

[5] The Respondents Counsel on the other hand argued that:

5.1 the amount claimed is substantial;

5.2 the matter is complex as the factual and legal issues arising are complex;

5.3 the Applicant himself has been remiss in advancing the matter such that has been pending for eleven years.

[6] The Court was referred to the case of **Sydney Mkhabela v Maxi-Prest Tyres 29/2005** for the consideration the President must make in deciding whether or not to refer a matter to arbitration.

[7] The pleadings reveal that the issue between the parties revolves around whether the Applicant was dismissed or absconded from his employ. Which these issues will turn on findings of fact. I take cognisance of the fact that the arbitrators at the Commission are now all legal practitioners with LLB degrees. I have no doubt that the issues arising from the facts of this dispute are not so complex as to require the relatively formal procedure best suited for a Court of law. I foresee no prejudice on either party if the dispute is referred to the Commission for arbitration.

[8] The amount claimed is in my view not substantive.

[9] **In the circumstances, I make the following order.**

**9.1 The dispute is referred to arbitration under the auspices of the Commission.**

**9.2 No order as to costs.**

The members agree.



**S. NSIBANDE**

**PRESIDENT OF THE INDUSTRIAL COURT**

**For Applicant:** Mr. S. Dlamini

**For Respondent:** Mr. T.L. Sibandze