



IN THE INDUSTRIAL COURT OF ESWATINI

Case No. 198/18

In the matter between:

SIHLE ZUBUKO

Applicant

And

MEDICINS SANS FRONTIERS

Respondent

Neutral citation: *Sihle Zubuko v Medicins Sans Frontiers (190/18) [2018] SZIC 141 (04 February 2019)*

Coram:

S. NSIBANDE JP

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

Date Heard: 29 November 2018

Date Delivered: 04 February 2019

RULING ON APPLICATION FOR REFERRAL TO ARBITRATION

- [1] The Applicant has applied for an order that his pending application for determination of an unresolved dispute with the Respondent be referred to arbitration under the auspices of CMAC in terms of **Section 85(2) of the Industrial Relations Act 2000 as (amended)**.
- [2] The Applicant in his application for referral submits that the dispute in question is not a complex one and that the matter is capable of being handled by CMAC which has a number of experienced legal practitioners who are Senior Attorneys and specialists in labour law.
- [3] The Applicant submits further that although the Respondent is a non-profit organisation the sum claimed E101 568.00 is not excessive. The Court was referred to the case of **Simile Dlamini and Others v NDZ Consulting Company Case No. 403/17**.
- [4] The Respondent opposes the referral application and submits that the matter has legal and factual complex issues for determination regarding applicant's dismissal in that he claims double jeopardy; that the amount claimed is

substantial; and that the Respondent stands to be prejudiced by the limited right to appeal should the arbitrator make an incorrect conclusion of facts.

[5] The pleadings in the main application reveal that the Applicant was dismissed after a disciplinary hearing. No date of dismissal is revealed save that it is said Applicant was, on 7th December 2017 charged by the Respondent with 2 counts of misconduct. Looking at the pleadings, it appears to me that there may arise a number of disputes of fact starting from whether the charges are from a 2013 “**unlawful use of vehicle**” incident, whether the matter had been dealt with and a verbal warning issued in 2013; whether the Applicant made any admissions when confronted by the Respondent. An adverse finding of fact on any of these issues can not be challenged by the respondent on appeal and therein lies the prejudice of depriving a party against its will, from access to a court of law for the determination of a dispute. (**Zodwa Gamedze v Swaziland Hospice at Home IC Case No. 252/2005**).

[6] Further, I am in agreement with the Respondent that the amount claimed is substantive particularly for a non-profit organization dependant on external funding. The circumstances of this case militates against forcing a party to arbitration against its will particularly where it faces a substantial claim in the

face of potential disputes of facts, a wrong finding on which can not be cured by an appeal.

[7] In the circumstances the application for referral is dismissed. **There is no order as to costs.**

The members agree



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For the Applicant: Mr. B. Dlamini (Magongo Dlamini Attorneys)

For the Respondent: Mr. T. Simelane (Simelane Shongwe Attorneys)