IN THE INDUSTRIAL COURT OF ESWATINI

JUDGMENT

Case No. 245/18

In the matter between:

NHLANHLA NDZINISA & 2 OTHERS Applicants

And

LOMDASHI LIMITED Respondent

Neutral citation: Nhlanhla Ndzinisa & 2 Others v Lomdashi Limited (245/18) [2019] SZIC 54 (04 July 2019)

Coram: **S. NSIBANDE JP**
(Sitting with N.R. Manana and M.P. Dlamini Nominated Members of the Court)

Date Heard: 14 November 2018

Date Delivered: 04 July 2019

Summary: *Application to make CMAC Award an order of Court. Held – Court not bound to register an irregular order. Held – Court has no jurisdiction to review or rescind CMAC award. Held – Application postponed for 2 weeks for judgment.*

JUDGMENT

[1] On 2nd July 2018 a CMAC Arbitrator made an award against the Respondent for payment of a sum of E161 427.68 under various heads of claims. This award followed that the parties had entered into a memorandum of agreement on 28th July 2018 wherein the Respondent agreed to pay the said sum to the Applicants in terms of their individual claims against it,

[2] The Applicants have now applied to the Industrial Court to have the award made an order of court so that it may be enforced by execution. The Respondent opposes the Application.

[3] In an affidavit filed in opposition to the application, Ms Ntombifuthi Mbonane sets out the circumstances under which she says the award came to be.

[4] The parties had been called to conciliation at CMAC where the Conciliator assured that the Applicants' claims were in order and the Respondent was advised to settle them, thus resulting in the memorandum of agreement dated 28th June 2018.

[5] It was only after the signing of the agreements that the Respondent came to know that the agreement contained clauses that were either not provided for in law or that did not capture exactly what had been agreed upon.

[6] In this regard the Respondent questions the claim for being overworked for 6 months claimed by each individual and the claim for short staff for 18 months claimed by the first two Applicants.

The Respondent further questions the claim for payment of medical aid and funeral policy contributions directly to the Applicants when the initial agreement had been that medical aid and a funeral policy be taken up on behalf of the Applicants and would be paid directly to the chosen Medical Aid and Funeral Policy providers. Further the Respondent argued that the Applicants would not be entitled to cash for protective clothing but if anything, to an order directing Respondent to provide whatever protective clothing was outstanding.

[7] The Applicants' position was that the Respondent agreed to make the payments as captured in the agreement and that it became an arbitration award with their consent. They can not now want to come out of the agreement into which they entered voluntarily. Significantly though the Applicants say nothing about the nature of the claims upon which the agreement stands. In fact they concede, for example that it had been agreed that the Respondent would 'Set-up' a burial scheme with Eswatini Royal Insurance Corporation on their behalf and thereafter make monthly contributions **to the burial scheme at SRIC**. (See paragraph 11 of the Applicant's replying Affidavit).

[8] It appears to us that there may well be a case for the review of the award. It seems to us that the award may be irregular in that it is not clear if the Applicants seeks overtime when they claim to have been overworked for 6 months or short staffed for 18 months and it is not clear how these claim are computed. They admit to not being entitled to direct payment of the burial scheme contributions which they admit ought to be paid directly to the chosen service provider.

[9] It is unnecessary for the Court to make a determination whether a review application is not out of time as argued by the Applicants' attorney. In so

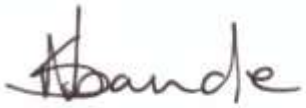
far as that may be necessary the Court hearing the review application will make the determination. Our view is that the award of the arbitration may be a nullity.

[10] This Court has no power to rescind or review the award of the arbitrator. We do, however have a discretion whether to make the award an order of court. (**See: Ocean Shongwe v Roots Construction Case No. 62/2008, Ntokozo Mavuso v A&M Enterprises (Pty) Limited Case No. 318/2007)**.

[11] Our view is that it is in the interests of fairness and justice that we postpone delivery of judgment for a period of two weeks to give Respondent an opportunity to take the steps to the aside the arbitrator's award in the proper forum. Should no such steps have been taken we shall make our judgement on the application to make the award an order of the court.

We postpone the delivery of judgment to 18th July 2019.

The members agree



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For Applicants: Mr. M. Mbhamali

For Respondent: Mr S. Madzinane