



IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 80/18

In the matter between:

NQOBILE NOMCEBO SIMELANE

Applicant

And

FOODCOM (PTY) LTD

Respondent

Neutral citation: Nqobile Nomcebo Simelane v Foodcom (Pty) Ltd (80/2018)
[2019] SZIC 59 (09 July 2019)

Coram: **S. NSIBANDE JP**

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

Heard: 11 April 2019

Delivered: 10 July 2019

RULING

[1] This is an opposed application for the referral of an unresolved dispute between the parties, to the Conciliation Mediation and Arbitration Commission (CMAC) for arbitration.

[2] The Applicant claims to have been unfairly dismissed by the Respondent on 4th April 2017, on allegations of having assaulted a fellow employee. She alleges that her dismissal was substantively and procedurally unfair and claims a total amount of E28 024.32 (twenty-eight thousand and twenty-four Emalangeni thirty two cents)

[3] The application for referral is based on three reasons; that the Honourable Court is always flooded with backlog of cases (sic); that the CMAC is competent to determine the dispute; and that the sum claimed is not substantial.

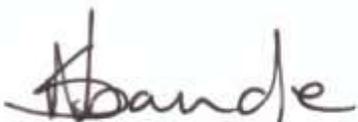
[4] In opposing the application the Respondent submitted that there are complex issues of law that arise from the facts of the matter that require the more formal court procedure and that the amount claimed cannot be a decisive factor to have the matter referred to arbitration. The Respondent did not explicitly deny that the amount sought is not substantial.

[5] Having read and considered the pleadings herein, I have no hesitation in coming to the conclusion that there are no complex factual or legal issues for determination in this matter. Whether the Applicant started the fight and actually assaulted her workmate is a simple question of fact that can easily be determined by an arbitrator, the fight having been witnessed by fellow employees.

[6] The Court has previously expressed its reluctance to force a party to compulsory arbitration where the amount claimed is substantial and where complex issues of fact arise in the matter. The amount claimed *in casu* is not substantial. Taking into account the legal and factual issues arising from the dispute and the total amount of the claim, I come to the conclusion that there will be no prejudice to the Respondent if the matter is referred to arbitration. I accordingly make the following order:-

(a) The dispute between the parties is referred to arbitration under the auspices of CMAC.

(b) Each party is to pay its own costs.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For the Applicant:

Mr M. Mbonani (David Msibi & Associates)

Labour Consultants

For the Respondent:

Mr. D. Manica (Manica Attorneys)