

IN THE INDUSTRIAL COURT OF ESWATINI

RULING

Case No. 232/16

In the matter between:

TERESA SITHOLE

Applicant

And

SWAZI PLASTIC INDUSTRIES (PTY) LTD

Respondent

Neutral citation: Teresa Sithole v Swazi Plastic Industries (Pty) Ltd (232/2016)
[2019] *SZIC 91* (07 October 2019)

Coram: **S. NSIBANDE JP**

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

Heard: 19 June 2019

Delivered: 07 October 2019

RULING

[1] The Applicant applied to the President of the Industrial Court for the referral of her unresolved dispute with the Respondent to the Conciliation Mediation and Arbitration Commission (CMAC) for arbitration.

[2] The application for the referral is based on the following:-

- (a) that the dispute will be resolved more speedily and quicker at arbitration than through Court proceedings;
- (b) that the amount claimed is not a substantial sum for the Respondent;
- (c) that there are no significant disputes of fact that may arise in the matter.

[3] The application for referral was served in the Respondent's attorneys on 24th May 2019. When the matter was called on 19th June 2019 the Respondent nor its attorneys were before Court. Nor was there an explanation for their default. Being satisfied with the manner of service of the application we allowed the Applicant to move the application.

[4] Despite the absence of the Respondent the Judge President remains with the duty to weigh the benefits of robust justice by way of CMAC against the benefits of a more formal judicial determination by the Industrial Court.

[5] The Applicant alleges that her dismissal was unfair because she did not commit any misconduct in that the only plastics found in her possession were scrap plastics which the Respondent's employees were allowed to use; that she did not breach any rule and/or policy with regard to the use of the plastic bags; and that the Respondent was selective in the manner in which it meted out discipline and in the manner that it punished those who were disciplined yet they had all committed a similar offence.

[6] The Respondent denies that the dismissal was unfair procedurally or substantively and avers that the charges against the Applicant were proved on a balance of probability and that while the charges against the various employees who were disciplined may have been similar, the circumstances of each case differed such that the results thereof could not have been expected to be the same.

[7] The facts of this matter, while not being too complex, seem to bring with them a number of disputes regarding a number of issues concerned with the dismissal of the Applicant. There are issues regarding the nature of the property found in the Applicant's possession – what was the nature of the goods and how much of them were found in Applicant's possession?

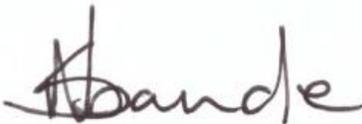
[8] There is an issue that also arises as to whether the Respondent acted consistently against its employees who were in a similar predicament as that of the Applicant.

[9] It is my view that these issues may raise real disputes of fact at the hearing of this matter. With the amount sought by the Applicant being, in my view, substantial, it will be prejudicial for the Respondent to have the matter referred to arbitration. This is so because of the inability of the Respondent to appeal against an adverse finding of fact.

[10] In any event the Applicant herself has not moved with any haste to have her matter heard. The Respondent filed its reply on 14th September, 2016 and the matter was referred to the Registrar for the allocation of a trial date. Since

then the Applicant, being *dominis litis*, has not moved the matter forward with any haste and has not held a pre-trial conference nor made a request for a trial date. She can not now be heard to be saying the matter must be heard expeditiously.

[10] In the circumstances, the application for referral is dismissed. Each party is to pay its own costs.



S. NSIBANDE

PRESIDENT OF THE INDUSTRIAL COURT

For the Applicant: Mr David Msibi & Associates, Labour
Consultants)

For the Respondent: (Musa M. Sibandze Attorneys)

