



**IN THE INDUSTRIAL COURT OF ESWATINI**

**RULING**

Case No. 28/2020

In the matter between:

**COLANI DAN SIMELANE**

Applicant

And

**HEALTHWAY INVESTMENT (Pty) Ltd**

Respondent

**Neutral citation:** Colani Dan Simelane v Healthway Investment (Pty) Ltd  
[2020] [28/2019] SZIC 135 (11 November 2020)

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

(Sitting with M.P. Dlamini and E.L.B.Dlamini  
Nominated Members of the Court)

**Date Heard:** 17 June 2019

**Date Delivered:** 11 November 2020

## RULING

- [1] The applicant was employed by the respondent as a security guard on 1<sup>st</sup> March 2013 until 24<sup>th</sup> October 2019 when he resigned from the respondent's employ. He regards his resignation as constructive dismissal and reported a dispute to the Conciliation, Mediation and Arbitration Commission (CMAC) in that regard.
- [2] The dispute could not be resolved and the Commission issued a certificate of unresolved dispute after which the applicant approached the Court for the determination of the unresolved dispute. In his statement of claim the applicant averred that he invoked **section 37 of the Employment Act of 1980** after being told of his redeployment to Manzini where he was expected to work.
- [3] The respondent opposed the application and filed its reply. In its reply the respondent denied the allegations made by the applicant regarding the claim of constructive dismissal. The matter currently awaits allocation of trial dates by the office of the Registrar.

[4] The applicant has now filed an application in which he seeks a direction that the pending application for determination of an unresolved dispute be referred to arbitration under the auspices of the Conciliation, Mediation and Arbitration Commission (CMAC). In his founding affidavit the applicant states his reasons in support of his application as follows:

4.1 that the amount claimed is not substantial;

4.2 that there is a backlog of cases in the Court whereas CMAC was established to provide a mechanism for the speedy resolutions of conflicts in labour matters; and

4.3 that the matter could be easily resolved at the Commission through arbitration.

[5] The respondent opposes the application on the following grounds:

5.1 the amount claimed is substantial regard being had to the respondent's position as a small business with a low turnover.

5.2 that the matter is complex with factual issues in dispute. When the matter was argued the respondent's representative submitted that the matter presented a novel factual issue in that it alleged

that the applicant's resignation was a result of having been verbally advised of pending disciplinary action against him.

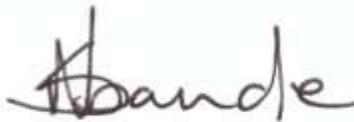
[6] The dispute between the parties involves issues of constructive dismissal. Numerous cases of constructive dismissal have been decided by this Court. There are therefore no novel legal issues that arise in this matter. The principles pronounced by the Court in previous judgements will apply to this matter regardless of the reason for applicant's resignation. These judgments will serve as precedent to guide an arbitrator dealing with the dispute.

[7] On the amount claimed being substantial, I take cognisance of the fact that E22 030.40 out of the total claim of E57 939.40 is made up of claims for outstanding wages, holiday pay, leave pay, unpaid off days and underpayments of wages. These amounts are easily determinable through the relevant **Regulation of Wages Order**. It is a simple matter of fact to determine whether or not the respondent complied with the relevant provisions of the Order.

[8] In my view, therefore, having taken into account the nature of the dispute, the legal and factual issues arising therefrom and the total

amount of the claim by the applicant, I come to the conclusion that there will be no prejudice on the respondent if the dispute is referred to CMAC for arbitration. I accordingly make the following order:

- (a) The dispute between the parties under Industrial Court Case No.28 of 2020 is hereby 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 Applicant:** Mr S. Dlamini (Selby Dlamini Labour Law Consultants)

**For Respondent:** Mr T. Ndlovu (Dlamini Ndlovu Incorporated (Pty Ltd))