



CASE NO: LAC 59/2009

IN THE HIGH COURT OF NAMIBIA

In the matter between:

ROADS CONTRACTOR COMPANY

APPLICANT

And

JACUES ALBERTO KOOPMAN

RESPONDENT

CORAM: UEITELE, AJ.

Heard on: 2010.06. 04

Delivered: 2011.04.20

JUDGMENT

UEITELE A J [1] In this matter the appellant has given notice on 24 September 2009, that “it appeals, in terms of Section 89 of the Labour Court Act, 11 of 2007 against the whole of the arbitration award made by the learned Arbitrator, Mr. Sonnyboy Mbenjela Mwanawina, dated 21 September 2009.

[2] The Appellant further gave notice that it “relies on the following grounds of appeal involving mixed fact and law:

- “1. The Arbitrator erred in law and/or as the facts in finding that the dismissal of the respondent was procedurally unfair:
2. The Arbitrator erred in law and/or as that facts in finding that the appellant should pay the respondent an amount of N\$827 048-00 as compensation”.

[3] The Appellant correctly identifies Section 89 of the Labour Act, 2007 (Act 11 of 2007) as the law conferring a right on it to appeal against an award of the Arbitrator- Section 89 of the Labour Act, 2007 in material part provides as follows:

- “89 (1) A party to a dispute may appeal to the Labour Court against an Arbitrator’s award in terms of Section 86-
- (a) on any question of law alone; or
 - (b) in the case of award in a dispute initially referred to the Labour Commissioner in terms of Section 7 (1) (a) on question of fact, law or mixed fact and law”.

[4] The question here is whether the intended appeal is indeed in terms of Section 89?

[5] I gathered from the record that on 11 March 2009, Mr. Jacques Alberto Koopman, in terms of Section 82 (7) and Section 86 (1) Regulation 16 (1), Regulation 18 (1) and Regulations 20 (1), referred a dispute to conciliation or

arbitration. The referral was done on the prescribed Form LC 21. See page 1 of the record.

[6] I am of the view that, if the appeal to this Court is made against an award made by an Arbitrator in terms of Section 86 of the Labour Act 2007, such appeal can only be made on “*a question of law alone*”. In a recent judgment ***Shoprite Namibia (Pty) Ltd Appellant v Faustino Moises Paulo First Respondent Emma Nikanor N.O. Second Respondent***, (unreported as yet) Parker J at page 4 of the cyclostyled judgment said the following:

“...the interpretation and application of s. 89(1)(a) lead indubitably to the conclusion that this Court is entitled to hear an appeal on a ‘*question of law alone*’ if the matter, as in the instant case, does not fall under s. 89(1)(b). A ‘question of law alone’ means a question of law alone without anything else present, e.g. opinion or fact...”

[7] Since the Appellant in its notice of appeal intends to appeal on grounds involving mixed fact and law, I answer the question that I have posted above in paragraph 4 in the negative. The Appellant’s intended appeal is not in terms of Section 89.

[8] In addition to the fact that the intended appeal is not in accordance with Section 89(1) (a) of the Labour Act, 2007, I want to highlight the following:

(a) Rule 17 (3) provides:

“An appeal contemplated in subrule (1) (c) must be noted in terms of the Rules Relating to the Conduct of Conciliation and Arbitration before the Labour Commissioner published in Government Notice No. 262 of 31 October 2008 (hereafter “the conciliation and arbitration rules”), and the appellant must at the time of noting the appeal – -

- [a] complete the relevant parts of Form 11;
- [b] deliver the completed Form 11, together with the notice of appeal in terms of those rules, to the registrar, the Commissioner and the other parties to the appeal.”

(b) Rule 23 (2) of the conciliation rules states that the notice of appeal must set out

- “[a] whether the appeal is from the judgment in whole or in part, and if in part only, which part;
- [b] in the case of appeals from an award concerning fundamental rights and protections under Chapter 2 and initially referred to the Labour Commissioner in terms of section 7 (1) (a) of the Act, the point of law or fact appealed against;
- [c] in the case of an award concerning any other dispute, the point of law appealed against; and
- [d] the grounds upon which the appeal is based.”

(c) Rule 23 (3) of the conciliation rules reads:

“Any appeal lodged in terms of this rule must be prosecuted in the Labour Court in accordance with the Labour Court Rules made under section 119 of the Act.”

[9] In terms of rule 17 (15) the appellant may within ten days after the record has been made available to it, “*amend, add to or vary*” the terms of its notice of appeal. The respondent in the appeal must within 21 days after receipt of the record “*deliver a statement stating the grounds on which he or she opposes the appeal together with any relevant documents.*”

[10] The notice of appeal in this matter is furthermore defective because:

- (a) it does not specify the error of law committed by the Arbitrator when she/he found that the dismissal of the respondent was procedurally unfair as required by Rule 23 (2) of the conciliation rules.
- (b) it does not specify the error of law committed by Arbitrator when he she found that the appellant must pay the respondent an amount of N\$ 827 048-00 as compensation.

[11] In the result the purported appeal is struck off the roll. I make no order as to costs.

UEITELE, AJ

ON BEHALF OF THE APPLICANT:

MR PHILANDER

INSTRUCTED BY:

LORENTZANGULA IN

ON BEHALF OF THE RESPONDENT:

NO APPEARANCE