

NOT REPORTABLE

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: I 7/2004

In the matter:

NORED ELECTRICITY (PTY) LTD

PLAINTIFF

and

LEMPIE NDINELAGO ANGULA

DEFENDANT

Neutral citation: *Nored Electricity (Pty) Ltd v Angula* (I 7-2004) [2014] NAHCMD 142 (16 April 2014)

Coram: VAN NIEKERK J

Heard: 21, 22, 23, 24 February 2006; 3, 4 July 2006

Delivered: 16 April 2014

Flynote: Action for damages arising from alleged misappropriation of money over certain period – Plaintiff’s case wholly dependent on admissibility of computer print-outs – Plaintiff handed in several computer print-outs

during testimony of witness who also deposed to affidavit in terms of section 2(1), (2), (4) and (5) of Computer Evidence Act, 1985, (Act 32 of 1985) to authenticate the computer print-outs in order to ensure their admissibility – Evidence during cross-examination showing that witness only began employment at plaintiff after period alleged by plaintiff – Witness did not comply with peremptory provisions of section 2(3)(a) of the Act, which provides that the ‘deponent to an authenticating affidavit shall be some person who is qualified to give the testimony it contains by reason of his knowledge and experience of computers and of the particular system by which the computer in question was operated at all relevant times’ - Witness also testified that computer system had loopholes, no proper control and security measures and was open to abuse – Witness not in position to make authenticating affidavit – Computer print-outs ruled inadmissible – Claim dismissed.

ORDER

The plaintiff’s claim is dismissed with costs.

JUDGMENT

VAN NIEKERK, J:

[1] The plaintiff in this matter instituted action against the defendant, a former employee, for payment of N\$229 143-00 plus interest and costs. After certain amendments were effected, the final amount claimed during the trial was N\$185 925.00. The amended cause of action is based on the allegation that the plaintiff

suffered damages in the amount claimed after the defendant stole this amount during the period 2 April 2002 to 23 January 2003. In further particulars the plaintiff states that the defendant allegedly received the money on behalf of the plaintiff, but failed to account for it. The plaintiff also attached Annexure "A", which was later amended several times and which provides dates, receipt numbers and amounts indicating how the total amount claimed is made up.

[2] The defendant, while admitting that she was an employee of the plaintiff, denied in her plea that she stole any money. She specifically denied that she received any money on behalf of the plaintiff during the period 19 April 2002 to 28 May 2003 and that she failed to account for any money received on 4 April 2003 and 16 April 2003.

[3] The plaintiff called three witnesses. Two of them are Mr Stefanus H Mulenga, the plaintiff's senior accountant, and Mr Josephat Negumbo, a service controller in the plaintiff's employ. As matters unfolded during the trial, it is clear that it is not necessary to deal with their evidence in much detail. It will suffice to give the following summary.

[4] The plaintiff's business was to sell electricity to consumers by way of tokens. This was done via vending systems at the plaintiff's offices at various towns. The cashier's task was to sell pre-paid electricity to customers, to collect the money paid over and to account for each and every transaction. There were two kinds of pre-paid electricity systems. The one was called STS. This system involved the printing of a voucher or ticket on which certain numerical codes were printed. The customer had to punch these codes into a meter at home to obtain electricity to the value of the voucher. The other system was magnetic and involved charging a card with credit. This card would be entered into the meter at home and the meter would read the card to determine how much electricity could be used. Each transaction at the centre would be recorded by the computer system which was programmed to produce a report of all the transactions of each day which could be printed by the report printer. A summary of all transactions could also be produced by the ticket printer.

[5] The finance and administration official at each vending office supervised the cashier and also sometimes sold electricity when the cashier was absent. It is common cause that the defendant in this case was the finance and administration

official at the plaintiff's vending centre in Ondangwa. She was the supervisor of the cashier, Cecilia Kaheke. Both of them regularly did transactions at that office.

[6] The plaintiff also had some customers to whom electricity was supplied on account which accounts were payable at the various vending offices 30 days after consumption.

[7] The vending offices had office hours from 7h30 to 16h30 every weekday. The first and last half hour of every day was supposed to be used to prepare for the day or to cash up the day's transactions and to prepare the money to be banked. Banking was usually done the next day. Each cashier was supposed to start the day with a zero balance. No provision was made for a cash float. The offices were open for customers between 8h00 and 16h00. The offices were closed for lunch from 13h00 to 14h00. At 13h00 the cashier would log off the first shift. At 14h00 the cashier would log on to the second shift. Cash-up would be done at the end of the day. The computer would allocate a number for every cash-up. These numbers followed sequentially in ascending order.

[8] The cashier and any other operator, e.g. the finance and administration officer, had to log on to the computer system by means of a unique and secret password. If the finance and administration official takes over from the cashier or decides to do the cash-up duties at the end of the cashier's shift, the cashier is supposed to log out first and then the finance and administration official is supposed to log in under his or her own password. Sharing of passwords was considered irregular.

[9] Every day the cashier had to fill in by hand a cash-up form containing information about the day's total amount of money collected, the amount banked, the prepaid sales, the account payments any new connections and all sundry income. This form, plus the bank deposit slip, the summary printed by the ticket printer and would be forwarded from each office to the plaintiff's head office in Ongwediva, where Mr Negumbo's task was to check the documents forwarded.

[10] Mr Mulenga further explained that each cashier had to make sure at the end of each day that a certain tape is switched on for the system to make a backup of all the day's transactions.

[11] During May 2003 Mr Mulenga was involved in preparing the plaintiff's books for the financial year end in June. Some irregularities were found. This included that a cashier would do more than one cash-up during a particular day. This could be seen from records provided by the various offices. The relevant cash-up numbers were given to the information technology ("IT") staff for them to print the reports relating to those cash-ups. Upon studying the backup records retrieved by the IT staff, certain suspicious transactions were reflected. These also related to the vending centre at which the defendant worked.

[12] The plaintiff handed in certain computer print-outs of the backup records relating to the period alleged in the amended particulars of claim and in respect of the Ondangwa vending centre. This was done during the testimony of the plaintiff's third witness, Mr Mervin Hilundwa, the plaintiff's information technology ("IT") officer. Mr Hilundwa, in an attempt to comply with the provisions of the Computer Evidence Act, 1985, (Act 32 of 1985), ("the Act") made an affidavit as required by section 2(1), (2), (4) and (5) of the Act to authenticate the computer print-outs in order to ensure their admissibility. After the affidavit was handed in as Exhibit "A", his evidence was led in full and a large number of computer print-outs were handed in.

[13] However, during cross-examination by Mr Namandje on behalf of the defendant, it became clear that Mr Hilundwa only commenced his employment with the plaintiff during February 2003, which was after the period under review in this case. He also stated in evidence in chief that he learnt about the plaintiff's computer system by himself and that he acquainted himself with the operation of the system by working there. What is more, Mr Hilundwa testified that when he started working there, the computer system was outdated, that it gave certain problems, *inter alia*, it had some loopholes; that there were no proper control measures or security measures in the system and that it was open to abuse. He testified that the alleged misappropriation of money occurred during the time before he started working on the system and that the system was changed for the better after he started to work there.

[14] He was confronted with the following statements in paragraph 5 and 6 of his affidavit:

'5.

The computer was correctly and completely supplied with data and instructions appropriate to and sufficient for the purpose for which the information recorded in the print-out was produced.

6.

At all material times hereto the computer was unaffected in its operation by any malfunction, interference, disturbance or interruption which might have a bearing on such information or its reliability.'

[15] When it was pointed out to Mr Hilundwa that the relevant period to which these statements referred was 2 April 2002 to 23 January 2003, he conceded that he indeed only started working at the plaintiff during 2003. When he was asked whether he could say whether there were any disruptions in relation to the particular computer before he started working for the plaintiff, he said he would not know. He further confirmed that what he stated in paragraph 6 was not stated in reference to the period before he worked for the plaintiff.

[16] Mr *Namandje* submitted that Mr Hilundwa was clearly not in a position to make the statements contained in paragraphs 5 and 6. I agree with this submission. It further seems to me that Mr Hilundwa did not comply with the peremptory provisions of section 2(3)(a) of the Act, which provides that 'deponent to an authenticating affidavit shall be some person who is qualified to give the testimony it contains by reason of his knowledge and experience of computers and of the particular system by which the computer in question was operated at all relevant times.'

[17] Mr *Conradie* for the plaintiff countered these submissions by relying on the defendant's evidence that she never encountered any problems with the computer system apart from problems with a printer. However, the matter cannot be approached on the basis of the defendant's evidence. As Mr *Namandje* submitted, the computer print-outs are simply not admissible.

[18] It is common cause that the whole of the plaintiff's case is dependent for proof on the admissibility of these print-outs. Without these print-outs there is simply no case.

[19] The result is that the plaintiff's claim is dismissed with costs.

_____ (signed on original) _____

K van Niekerk

Judge

APPEARANCE

For the plaintiff:

Mr D Conradie
of Conradie & Damaseb

For the defendant:

Mr S Namandje
of Sisa Namandje & Co