

Practice Directive 61
REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION
RULING
APPLICATION FOR LEAVE TO APPEAL

Case Title: Victor Puteho Kangumu and Ndateelela Ndahafa Hamukwaya Namibia Industrial Development Agency The Labour Commissioner	Applicant 1 st Respondent 2 nd Respondent 3 rd Respondent	Case No.: HC-MD-LAB-APP-AAA-2021/00034 Division of Court: High Court (Main Division)
Heard before: Honourable Mr Justice Ndauendapo, J	Date of hearing: 03 February 2023 Delivered on: 17 February 2023	
Neutral citation: <i>Kangumu v Hamukwaya</i> (HC-MD-LAB-APP-AAA-2021/00034) [2023] NALCMD 9 (17 February 2023)		
IT IS HEREBY ORDERED THAT: <ol style="list-style-type: none">1. The application for leave to appeal is refused.2. There is no order as to costs.		
REASONS FOR ORDER:		

Introduction

[1] Before me is an application for leave to appeal to the Supreme Court against my judgment in which I dismissed the applicant's appeal against the arbitrator's decision.

Background facts

[2] The applicant was employed as a company secretary by the second respondent on two fixed-term employment contracts. The first contract was from 8 July 2019 to 7 October 2019. The second contract was from 8 October 2019 to 7 September 2020. The second contract terminated on 7 September 2020 by effluxion of time.

[3] Aggrieved by the termination, the applicant referred a dispute of unfair discrimination to the labour commissioner. He complained that he was short paid on the first contract by an amount of N\$11 767.41. On the second contract, he complained that the contract should have been for 12 months and not 11 months and that the termination on 7 September 2020 amounted to unfair dismissal. He also claimed that he was short paid an amount of N\$56 167.56 and unpaid leave days on the second contract.

[4] Following the arbitration before the first respondent, Ms Hamukwaya ordered that the second respondent pays the applicant an amount of N\$1 146.87 on the first contract and found that the second contract terminated by effluxion of time.

[5] Disenchanted with the findings of the arbitrator, he appealed to the High Court. This court dismissed his appeal and found that the arbitrator did not err in her findings. Again disenchanted by the dismissal of the appeal, he now seeks leave to appeal to the Supreme Court.

Grounds of appeal

[6] The applicant in the notice of application for leave to appeal noted around 15 grounds of appeal. The grounds overlap and boil down to two main grounds, namely: that the learned judge erred in law when he failed to consider the second respondent as a body corporate thus, the learned judge did not exercise his judicial discretion properly and misdirected himself when he dealt with the second respondent's condonation application in the absence

of director's resolution as required by rule4(2); the learned judge erred in law when he upheld the arbitrator's finding by disregarding or misinterpreting the caveat subscriber rule insofar as the terms of the appellant's fixed term employment contracts.

Determination

[7] The issue for determination is whether the applicant has good prospects of success and whether the Supreme Court may come to a different conclusion as the one reached by this Court.

[8] Having regard to the facts and submissions by counsel the answer to those questions is a clear no. There are no prospects of success on appeal and I am not persuaded that the Supreme Court would come to a different conclusion.

[9] In the result, I make the following order:

1. The application for leave to appeal is refused.
2. There is no order as to costs.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Applicant	2nd Respondent
V Kangumu In person, Windhoek	S Nambinga of Palyeenime Incorporated, Windhoek