**REPUBLIC OF NAMIBIA**

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 **HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION**

 **HELD AT OSHAKATI**

 **RULING**

Case No: HC-NLD-CIV-ACT-CON-2018/00161

In the matter between:

**REBEKKA NANGULA KAMBONDE 1ST PLAINTIFF**

**ELIZABETH KALENINASHO KAPUKA 2nd PLAINTIFF**

**LUKAS HAFENI KAMATI 3rd PLAINTIFF**

**PETRINA AMUPOLO 4th PLAINTIFF**

**MENETTE NDJENE 5th PLAINTIFF**

**LETISIA SHIWEDA 6th PLAINTIFF**

**PAULUS NDANYENGWA UUGWANGA 7th PLAINTIFF**

**DAVID ASSER 8th PLAINTIFF**

**EDWARD MWANDINGI MALAPI 9th PLAINTIFF**

**THOMAS NDILIMEKE NKANDI 10th PLAINTIFF**

**JOHANNA TUMENIYENI ELAGO 11th PLAINTIFF**

**HILMA KIRVINENA NAMBANZA 12th PLAINTIFF**

**HELVI VATILIFA 13th PLAINTIFF**

**MARTHIN NDAMANHOMATA 14th PLAINTIFF**

**SAKEUS SHEKUPE NAKAAMBO 15th PLAINTIFF**

**JAKOB HAMBABI 16th PLAINTIFF**

**ROSALIA NDAPANDA NAMENE 17th PLAINTIFF**

**NIKANOR HOMATENI UUKONGO 18th PLAINTIFF**

**HELLA KAPUNDJA 19th PLAINTIFF**

**GEBHARD JONA 20th PLAINTIFF**

**NDAMONONGHENDA SHITYENI 21st PLAINTIFF**

**SESILIA HAIKALI 22nd PLAINTIFF**

**AILI AMANDUS 23rd PLAINTIFF**

**JASON KONDJILA NANGOMBE NAHANGO 24th PLAINTIFF**

**MARIA NANGULA ANGULA 25th PLAINTIFF**

**DAVID MAFUTA NEGONGA 26th PLAINTIFF**

**JOHANNA NDAPEWA NEPUNDA 27th PLAINTIFF**

**FRIEDA KAMBONDE 28th PLAINTIFF**

**HELENA NDAPANDA TOMAS 29th PLAINTIFF**

**MATHIAS NAMBAHU 30th PLAINTIFF**

**GABRIEL TEGELELA AMAKALI 31st PLAINTIFF**

**NAEMI NAMUTENYA SHILIKOMWENYO 32nd PLAINTIFF**

**CECILIA KAUNAPAWA HAUDILA 33rd PLAINTIFF**

**EMILIA MATHIAS 34th PLAINTIFF**

**ELIAKIM ELAO HAIHAMBO 35th PLAINTIFF**

**TITUS NANDJEDI 36th PLAINTIFF**

**JAKOBUS IPANGELWA 37th PLAINTIFF**

**DAVID NGHIFIKEPUNYE 38th PLAINTIFF**

**KAARINA NAITSUWE ASHIKUTU 39th PLAINTIFF**

**MELKISEDEK UUKONGO 40th PLAINTIFF**

**JUUNO TWATEGA KANGONGA 41st PLAINTIFF**

**ELIZABETH NEKWAYA ANTANGA 42nd PLAINTIFF**

**PETRUS SHIPANDENI KANKU 43rd PLAINTIFF**

**MARIA NDANYENGWA EELU 44th PLAINTIFF**

**TOMAS ANGALA 45th PLAINTIFF**

**FILLEMON MTALENI MBENZI 46th PLAINTIFF**

**MATIAS ELAGO PAMWENATSE MWENDELELI 47th PLAINTIFF**

**HELENA NDEAPO ASHIKOTO 48th PLAINTIFF**

**GABRIEL JOHANNES 49th PLAINTIFF**

**PENEHAFO MALAKIA 50th PLAINTIFF**

**HILMA NAKUFU TIMOTEUS 51st PLAINTIFF**

**BENEDICTUS SHIVUTE NAMUKUGO 52nd PLAINTIFF**

**LINUS NDANEPETHIMBO KASHAPI 53rd PLAINTIFF**

**MARIA KALUMBU 54th PLAINTIFF**

**JOHANNA TEGELELA SHIVUTE 55th PLAINTIFF**

**VILHO PETRUS 56th PLAINTIFF**

**ELIA AUENE AUENE 57th PLAINTIFF**

**MATHIAS KAAMBONDE SHIKONGO 58th PLAINTIFF**

**GEBHARD KAPUNDA 59th PLAINTIFF**

**JOHANNES ILEMO 60th PLAINTIFF**

**ELIFAS MBANGO 61st PLAINTIFF**

**GEBHARD NDANGI AMUNYELA 62nd PLAINTIFF**

**SELMA SELHA AMUNYELA 63rd PLAINTIFF**

**EUNIKE AMWELE 64th PLAINTIFF**

**HELVI AMAKALI 65th PLAINTIFF**

**FRANSISKU ABROSIUS 66th PLAINTIFF**

**ANNA AMUTENYA 67th PLAINTIFF**

**HILMA NDAKUMWA ANGULA 68th PLAINTIFF**

**CONSTACIA ASHIPALA 69th PLAINTIFF**

**NAEMI MWAYOLANGE AMULUNGU 70th PLAINTIFF**

**HILENI AMAKUTSI 71st PLAINTIFF**

**JUSTINE KANDIWAPA AMUNYELA 72nd PLAINTIFF**

**MARTHA NDESHIHALA AYEHEAANTU 73rd PLAINTIFF**

**JOHANNA NDAPEWA EELU 74th PLAINTIFF**

**TEOPOLINA ELIASER 75th PLAINTIFF**

**NDAMONA ENGHALI 76th PLAINTIFF**

**ANNA FILLEMON 77th PLAINTIFF**

**ANNA FILIPPUS 78th PLAINTIFF**

**JOSEF HAKUUNDA 79th PLAINTIFF**

**ROSALIA HAMALWA 80th PLAINTIFF**

**PENEPANDULO OTTILIA HANDUNGE 81st PLAINTIFF**

**FRIEDA NDESHIPANDA IHUHWA 82nd PLAINTIFF**

**MARTHA KAALE INANE 83rd PLAINTIFF**

**KATRINA NDAPEWA JAKOB 84th PLAINTIFF**

**VILHO JASON 85th PLAINTIFF**

**HILENI JOHANNES 86th PLAINTIFF**

**LEMPIE JOHANNES 87th PLAINTIFF**

**MARTHA JOHANNES 88th PLAINTIFF**

**LIINA NDINELAO JOSEPH 89th PLAINTIFF**

**FENNI NDAPANDULA JUNIAS 90th PLAINTIFF**

**JAPHET KALEKELA 91st PLAINTIFF**

**LOIDE KAMATI 92nd PLAINTIFF**

**MATIAS KANDJUNGU 93rd PLAINTIFF**

**ANATOLIA KAUKUNGWA 94th PLAINTIFF**

**HILENI MANYA 95th PLAINTIFF**

**FRIEDA MATEUS 96th PLAINTIFF**

**HILMA NIILONGA MBANGO 97th PLAINTIFF**

**MARIAN KANDALI MBENZI 98th PLAINTIFF**

**FRIEDA OLIVIA MUTALENI 99th PLAINTIFF**

**JOHANNA NANGULA NAMBAHU 100th PLAINTIFF**

**PRISKILA NAMUKUGO 101st PLAINTIFF**

**TEOPOLINA NANKUDHU 102nd PLAINTIFF**

**SYLVIA NANGULA NDAEFA 103rd PLAINTIFF**

**NDAMONA NDEMWIIMBA 104th PLAINTIFF**

**ELIZABETH NEKONGO 105th PLAINTIFF**

**SOINI ELINA NEPANDO 106th PLAINTIFF**

**TADEUS HILIFAVALI NGHINYANGELWA 107th PLAINTIFF**

**HELVI NGHILINGANYE 108th PLAINTIFF**

**ELIFAS NTINDA 109th PLAINTIFF**

**MARIA TAATSU NUUNYANGO 110th PLAINTIFF**

**SAKARIA ANGULA NUUYOMA 111st PLAINTIFF**

**JULIA MARIA NAMUTENJA SHAPAKA 112nd PLAINTIFF**

**KAARINA SHIKANGALA 113rd PLAINTIFF**

**KEFAS SHIKONENI 114th PLAINTIFF**

**LINEA NELAO UUGWANGA 115th PLAINTIFF**

**KATRINA UUKUNDE 116th PLAINTIFF**

**FRIEDA MAGANO SHIGWEDHA 117th PLAINTIFF**

**JASON TANGENI SHIKONGO 118th PLAINTIFF**

**VICTORIA SHANDUKA 119th PLAINTIFF**

**EMILIA SEVERUS 120th PLAINTIFF**

**HELENA INOETHANDJE SHUUKIFENI 121st PLAINTIFF**

**FIINA SHINDONDOLA 122nd PLAINTIFF**

**YOOLOKENI TEGELELENI 123rd PLAINTIFF**

**HILMA ELLA USIKU 124th PLAINTIFF**

**HILMA SHIKONGO 125th PLAINTIFF**

**ABRAHAM MAGANAEM SHIPANGA 126th PLAINTIFF**

**SAIMA NDINELAO SIMON 127th PLAINTIFF**

**NATANGE SHIIMI LEEVI 128th PLAINTIFF**

**JULIA NDAPEWEKEKA UUGWANGA 129th PLAINTIFF**

**EVELINA FRIEDA IMMANUEL 130th PLAINTIFF**

**SAIMA PHILLEMON 131st PLAINTIFF**

**JEREMIA MATEUS 132nd PLAINTIFF**

**PRISKILA PANDU ABED 133rd PLAINTIFF**

**FRIEDA NDINELAGO AMAKALI 134th PLAINTIFF**

**MARGARETH HAMBELELA AMWELE 135th PLAINTIFF**

**PAULA TANGI- NUUSIKU AUALA 136th PLAINTIFF**

**FIINA NDAPANDA AUTA 137th PLAINTIFF**

**HILMA NAMVULA EDWARD 138th PLAINTIFF**

**FIINA HAITAMBA 139th PLAINTIFF**

**ESTER HANGULA 140th PLAINTIFF**

**HILYA MAGANO IIPITO 141st PLAINTIFF**

**SAIMA MARTA ILONGA 142nd PLAINTIFF**

**HILMA JOHANNES 143rd PLAINTIFF**

**WILHELMINA KAMBALA 144th PLAINTIFF**

**SELMA KANDALI INGO 145th PLAINTIFF**

**RAUHA PENDAPALA KONOMUUA 146th PLAINTIFF**

**KAARINA NAMBULA MANGUNDU 147th PLAINTIFF**

**SOFIA PANDULENI MICHAEL 148th PLAINTIFF**

**HENNI NDAWANIFA SHIKONGO 149th PLAINTIFF**

**MARIA MOONGO 150th PLAINTIFF**

**OTTILIE NDAFIMANA NIIKONGO 151st PLAINTIFF**

**EMMA TEGELELA NDUNGULA 152nd PLAINTIFF**

**SUAMA PANDULENI-NENYANYU NGHIKEMBUA 153rd PLAINTIFF**

**ROSALIA NGHUUPOVALI PETRUS 154th PLAINTIFF**

**MATHIAS SIMON 155th PLAINTIFF**

**HILMA FOIBE UUGWANGA 156th PLAINTIFF**

**GOTTLIEB HENDRIK UUSHONA 157th PLAINTIFF**

**PAULINA HEDIMBI 158th PLAINTIFF**

**PASKALIA WILHELMINA NIITA NGHIPANGELWA 159th PLAINTIFF**

**ELINA NDAPEWA-OMAGANO AMUKUGO 160th PLAINTIFF**

**HILMA NAAPOPYE SHILONGO 161st PLAINTIFF**

**JOOLOKENI HAIMBALA 162nd PLAINTIFF**

**RUUSA NDAMONO SHONGOLO 163rd PLAINTIFF**

**OTTILIE NDESHEETELWA NDEMUULA 164th PLAINTIFF**

**TRESIA ANASTASIU 165th PLAINTIFF**

**KRONELIA NELAGO KAYUHWA 166th PLAINTIFF**

**ESTER NDAYANDIMIKWA DUTE KULYA 167th PLAINTIFF**

**LASARUS MARTHIN MALUMBU 168th PLAINTIFF**

**HILMA NDEAPO TOKUNDU 169th PLAINTIFF**

**HANNU NDEAPO- RUBEN NAMBAHU 170th PLAINTIFF**

**JOHANNA NDAMONONGHENDA KANANA 171st PLAINTIFF**

**SAIMA SONDAHA SHONGOLO 172nd PLAINTIFF**

**HILENI NDEAPO NAMUPALA 173rd PLAINTIFF**

**WILHERMIN BETTY NEKOTO 174th PLAINTIFF**

**NDAPEWA TUYEIMO SHATIPAMBA 175th PLAINTIFF**

**MARIA AMUAALWA 176th PLAINTIFF**

**HILMA KAINEKELWA IYAMBO 177th PLAINTIFF**

**FRIEDA MEGAMENO KAGOGO 178th PLAINTIFF**

**NDAMONO TEOPOLINA MBEPO 179th PLAINTIFF**

**MARTHA NDATEGELELA MBOKOMA 180th PLAINTIFF**

**HILENI NDINELAGO NANGOLO 181st PLAINTIFF**

**LEENA NEKULU ANGOMBE 182nd PLAINTIFF**

**ELIZABETH ANGULA 183rd PLAINTIFF**

**THEOPOLINA NAAYOLE AMWAANYENA 184th PLAINTIFF**

**ELINA KAULINGE OBADJA 185th PLAINTIFF**

**REBBEKA NDAPEWA AMEYA 186th PLAINTIFF**

**AUGUSTE NANGOMBE KALIMBO 187th PLAINTIFF**

**LEA DIANA SHITUULA 188th PLAINTIFF**

**WILKKA MARIA AMUTENYA 189th PLAINTIFF**

**WILHEM NATANGWE IMALWA 190th PLAINTIFF**

**HILENI IYAMBO 191st PLAINTIFF**

**MARTHA ANGALENI IIPITO 192nd PLAINTIFF**

**SAARA IHUTHENI SHIKUNI 193rd PLAINTIFF**

**AUNE NDEAPO ELINDI 194th PLAINTIFF**

**INGA MARIA NAMUPOLO 195th PLAINTIFF**

**SALMI ESTER JOEL 196th PLAINTIFF**

**RAUNA VATILENI 197th PLAINTIFF**

**HELVI NDENGU 198th PLAINTIFF**

**LEENA MATHEUS 199th PLAINTIFF**

**LINEA HAFENI 200th PLAINTIFF**

**PETRINA IIPUMBU 201st PLAINTIFF**

**SELMA THOMAS 202nd PLAINTIFF**

**TAIMI NAMUPOLO IMENE 203rd PLAINTIFF**

**SELMA MAGANO KAMATI 204th PLAINTIFF**

**ELIA NEKWAYA LYNDY DANIEL 205th PLAINTIFF**

**PETRINA UUGWANGA 206th PLAINTIFF**

**SUAMA SHINYAMA 207th PLAINTIFF**

**SESILIA NDAPANDULA SHUUDENI 208th PLAINTIFF**

**ISANDRA GABRIELA SIMBO 209th PLAINTIFF**

**VICTORIA NDESHIMANA AMAKALI 210th PLAINTIFF**

**HILMA KANTENE 211th PLAINTIFF**

**JOHANNA THIKAMA SHILONGO 212th PLAINTIFF**

**LOVISA NDEAPO IIKALI 213th PLAINTIFF**

And

**LUTHERAN MEDICAL SERVICES** **1ST DEFENDANT**

**EVANGELICAL LUTHERAN CHURCH IN NAMIBIA 2ND DEFENDANT**

**MINISTRY OF HEALTH AND SOCIAL SERVICES 3RD DEFENDANT**

**Neutral citation***: Kambonde v Lutheran Medical Services* (HC-NLD-CIV-ACT-CON-2018/00161) [2020] NAHCNLD 77 (29 June 2020*)*

**Coram**: DIERGAARDT, AJ

**Heard**: **25 June 2020**

**Delivered: 29 June 2020**

**Flynote:** Special plea – jurisdiction – civil matters to be heard – in the high court – restricted by statute – Labour Court has jurisdiction – special plea upheld.

**Summary:** The plaintiffs approached the high court after an alleged breach of the employment contract, in that the defendants were failing and or refusing to pay out their accrued leave days. The first and second defendant transferred all personnel in their employ over to the third defendant. The plaintiffs had prior to approaching the high court referred their matter to the Labour Commissioners office, the arbitrator declined to hear the matter as they referred the matter late in terms of the Labour Act 11 of 2007. The plaintiffs now seek direct access to the High Court (sitting as the High Court). The defendants raised a special pleas on jurisdiction.

*Held:*This Court (sitting as the High Court) has no jurisdiction to determine a matter that falls in the ambit of s 117(1) (d), (g), (h), (i) and s 23 of the Labour Act 11 of 2007.

*Held:* The second and third defendants special pleas are upheld.

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 **ORDER**

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1. The second and third defendants special pleas are upheld;
2. This Court (sitting as the High Court) has no jurisdiction to determine a matter that falls in the ambit of s 117(1) (d), (g), (h), (i) and s 23 of the Labour Act 11 of 2007;
3. The plaintiffs are ordered to pay the costs of the second and third defendants.

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 **JUDGMENT**

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DIERGAARDT AJ:

*Introduction*

[1] At issue in this ruling is a special plea to jurisdiction is raised by the second and third defendants. The first defendant according to record no longer exist, but is cited for completeness. The court is accordingly called upon to decide whether or not the said pleas, have merit.

*Background*

[2] I briefly outline the facts that give rise to this defence, as appears from the papers. I do so in order to place all the issues that arise, into proper perspective so as to conduce to a full and proper understanding of the court’s decision in the final analysis.

[3] This matter originated from a dispute that occurred between the plaintiffs and the first and second defendants.

[4] The said dispute is a dispute regarding the non-payment of accrued leave days due and payable to the plaintiffs in terms of their employment with the first and second defendants and in addition, in terms of section 23 of the Labour Act, 2007 (Act No. 11 of 2007).

[5] During the period between 6 June 1990 and 30 June 2015, the Plaintiffs and the 1st Defendant entered into an oral/written employment agreement/contract, in respect of their employment at the hospital (Onandjokwe Intermediate Hospital) as nurses, cleaners, labourers, pharmacists and technical assistants.

[6] The plaintiffs’ dispute/complain of non-payment of accrued leave days arose on 18 July 2015, when the plaintiffs’ contracts of employment with the first and second defendants was terminated. This was not a termination in the ordinary sense of the word, there was a substitution of employer. The plaintiffs transitioned into the employment of the third defendant. This was well after the Labour Act, Act No. 11 of 2007 was implemented and brought into effect.

[7] Some of the Plaintiffs then referred a labour dispute/complaint with the Office of the Labour Commissioner on 12 September 2016 under the case, NROS 123-16: *Hilma Nambanza and 5 others v Onandjokwe Intermediate Hospital*.

[8] Upon receiving the form LC 21, the Labour Commissioner then sent a notice of dismissal and / or struck from the roll the matter for the following reason:

 ‘8.1 lack of jurisdiction

8.2 other (specify): The case has prescribe because the dispute arose on 18 July 2015 and it was received in our office in Windhoek on 19 July 2016. Therefore, I have no jurisdiction to hear this matter.’

[9] The Labour Commissioner’s decision to strike the case, NROS 123-16; *Hilma Nambanza and 5 others v Onandjokwe Intermediate Hospital* was never appealed or reviewed in the Labour Court or any other court.

[10] The Plaintiffs, in this matter brought an action before the this Honourable Court against the Defendants, claiming amongst others, a breach of the contractual and/or statutory obligations by the defendants by *inter alia*, refusing and/or failing to pay the respective plaintiffs’ accrued leave days, despite demand.

*The plaintiffs’ claim*

[11] The plaintiffs’ in this matter brought an action before this court against the defendant claiming breach of the contractual and or statutory obligations in that the defendants are failing and or refusing to pay the plaintiffs their accrued leave, alternatively damages. In the further alternative, seek for the third defendant to “register and record the plaintiffs leave day[s] accrued in respect of their employment with Onandjokwe Hospital [Lutheran Medical Services]”.

*The special pleas*

[12] The second and defendant filed special pleas to the claim in that the High Court has no jurisdiction to determine the matter, as it is governed by the Labour Act, 11 of 2007. The defendants in their heads of argument submit that the plaintiffs claim emanates from an employment contract and it is therefore a labour case which falls to be determined by the Labour Commissioner. Mr Mutorwa appeared for the third defendant in submissions advanced that it was also not sound for the plaintiffs to have their matter determined piecemeal.

[13] Plaintiffs in their heads of argument submit that the High Court’s jurisdiction is not ousted by the provisions of the Labour Act, 11 of 2007. Mr Nekwaya, counsel for the Plaitiffs argues that the High Court has inherent jurisdiction to determine the relief claimed by the plaintiffs, and further that the Labour Court does not adjudicate and grant the remedy the plaintiffs are seeking. He opines that the plaintiffs can tap into the reservoir of power held by the High Court as it is a constitutional entitlement. Mr Nekwaya submitted that a statute that negates the constitutions inherent jurisdiction does not apply, I do not agree with this view.

[14] There is no doubt that the plaintiffs claim arises out of an employer and employee relationship, it also appears that the employer and employee relationship between the plaintiffs and third defendant continues. The Labour Act, 11 of 2007 regulates basic conditions of employment, including accrued leave and the labour court has exclusive jurisdiction thereto in terms of s 117(1) which reads:

‘Jurisdiction of the Labour Court

117. (1) The Labour Court has exclusive jurisdiction to -

 (a) determine appeals from -

 (i) decisions of the Labour Commissioner made in terms of this Act;

 (ii) arbitration tribunals’ awards, in terms of section 89; and

 (iii) compliance orders issued in terms of section 126.

 (b) review -

 (i) arbitration tribunals’ awards in terms of this Act; and

 (ii) decisions of the Minister, the Permanent Secretary, the Labour

 Commissioner or any other body or official in terms of -

 (aa) this Act; or

 (bb) any other Act relating to labour or employment for which the Minister

 is responsible;

 (c) review, despite any other provision of any Act, any decision of any body or official

 provided for in terms of any other Act, if the decision concerns a matter within the

 scope of this Act;

 (d) grant a declaratory order in respect of any provision of this Act, a collective

 agreement, contract of employment or wage order, provided that the declaratory

 order is the only relief sought;

 (e) to grant urgent relief including an urgent interdict pending resolution of a dispute

 in terms of Chapter 8;

 (f) to grant an order to enforce an arbitration agreement;

 (g) determine any other matter which it is empowered to hear and determine in term of this Act;

 (h) make an order which the circumstances may require in order to give effect to the

 objects of this Act;

 (i) generally deal with all matters necessary or incidental to its functions under this

 Act concerning any labour matter, whether or not governed by the provisions of

 this Act, any other law or the common law.’

[15] Not only does the Labour Court have jurisdiction over the matters aforesaid, the arbitrator in terms of s 86(15) may make an order inclusive of the following:

‘(a) an interdict;

 (b) an order directing the performance of any act that will remedy a wrong;

(c) a declaratory order;

(d) an order of reinstatement of an employee;

(e) an award of compensation; and

 (f) subject to subsection (16), an order for costs.’

[16] I am of the view that the only issue the court is called upon to decide is whether the relief sought by the applicant falls within the category of remedies where the High Court is excluded.

[17] I agree with this deduction by Damaseb JP in the matter of *Katjiuanjo v The Municipal Council of the Municipality of Windhoek* (I 2987/2013) [2014] NAHCMD 311 (21 October 2014) that ‘For the High Court not to entertain a matter, it must be clear that the original and unlimited jurisdiction it enjoys under Article 80 of the Constitution and s 16 of the High Court Act has been excluded by the legislature in the clearest terms.’ This cannot be said to be unconstitutional, and cannot further be said the doors of the high court have been closed to a litigant when an appropriate forum such as one finds under the Labour Act exists. In *Katjiuanjo* supra at p 10 Damaseb JP goes on to say ‘…Where a forum other than the High Court has been given jurisdiction, the inquiry is not so much about whether that forum is the more convenient or suitable forum but whether the legislature in express language intended to exclude the jurisdiction of the High Court.’

[18] The high court in *Katjiuanjo* assumed jurisdiction, in aforesaid matter plaintiff sought relief for specific performance as a result of a repudiation of some terms and conditions of employment, they sought damages for underpayments and benefits. The facts of that case are distinguishable from the current matter as the plaintiffs rely on benefits conferred by section 23 of the Labour Act, 11 of 2007. Is this also the very reason that they correctly approached the Labour Commissioner in the first instance, albeit late.

[19] Section 86(15) empowers the arbitrator to direct the performance of any act that will remedy any wrong. Remedy a wrong. I submit that such powers is bestowed onto the Labour court.

[20] The issue that surfaces now is the fact that the plaintiffs were not satisfied with the Labour Commissioners decision and seek recourse in the High Court to enter the claim that was not entertained by the Labour Commissioner.

[21] I am also of the opinion that for the reasons I have outlined previously s 117 (1) is not in conflict with s 2 of the High Court Act; *a fortiori*, since the Labour Court is a division of the High Court. Section 2 reads:

‘The High Court shall have jurisdiction to hear and to determine all matters which may be conferred or imposed upon it by this Act (i.e. the High Court Act) or the Namibian Constitution or any other law.’

[22] Parker J expressed himself regarding inherent jurisdiction of the High Court in the cases of *Shikwetepo vs Khomas Regional Council and other* (A 364/2008) [2008] NAHC (24 December 2008) he states at para 9:

‘It follows that in my opinion the “inherent” jurisdiction of the High Court to review acts of administrative bodies and administrative officials flow logically, i.e. “inherently”, from the ultra vires doctrine whose object is the control of governmental action or, indeed, inaction; but not “inherited” from Roman-Dutch law. That is the meaning and signification of the term “inherent” jurisdiction in the context of judicial review by the High Court of acts of administrative bodies and administrative officials; and that is the meaning that is apropos and relevant to the issue at hand in the present matter. But to use the term “inherent” jurisdiction at large, without reference to any particular aspect of any particular law, is, with respect, meaningless, empty and otiose.’

[23] He further interprets in para 17, section 117(1) (*c*) of the Labour Act ‘I pass to interpret and apply s 117 (1) (*c*) of the Labour Act 2007 which provides:

The Labour Court has *exclusive* jurisdiction to –

(c) review, *despite any other provision of any Act*, any decision of anybody or official provided for in terms of any other Act, if the decision concerns a matter within the scope of this Act; … [My emphasis]’

[24] Parker J further in para [21] continues ‘what s 117 (1) (*c*) has done – in essence – is that it has created a division of the High Court which is the only forum that has the jurisdiction – and it shares that jurisdiction with no other Court – to review acts of administrative bodies and administrative officials *so long as* such acts concern matters within the scope of the Labour Act, 2007.’

[25] In para 22 ‘The applicant is neither permitted nor entitled to go forum-shopping.’

[26] I concur with my brother that section 115 of the Labour court creates the Labour Court as a division of the High Court and vested it with the exclusive and specialised jurisdiction to deal with all matters necessary and incidental to its functions under section 117.

[27] I am in agreement that according to s 117 (1) of the Labour Act 2007, the Labour Court has exclusive jurisdiction to review, despite any other provision of any Act, any decision of anybody or official provided for in terms of any other Act, if the decision concerns a matter within the scope of this Act.

[28] I am of the view that the High Court cannot entertain a matter that falls under section 117. It purely falls under the jurisdiction n of the Labour Court.

[29] For the conclusions, the only reasonable and inexorable final conclusion that I can make judicially is that the plaintiffs present claim is caught within the purview of the Labour Act 2007; and so item 15 (2) of the Labour Act, 2007 must most certainly apply to it. I further direct my attention to s 18 (1) of the repealed Labour Act 1992 which reads:

**‘Jurisdiction and powers of Labour Court**

18. (1) The Labour Court shall have exclusive jurisdiction –

(a) to hear and determine –

* 1. any appeal from any district labour court;
	2. any appeal noted in terms of section 54 (4), 68 (7), 70 (6), 95 (4), 100 (2) or 114 (6);’

[30] It follows that the second and third defendants special pleas challenging the jurisdiction of this Court, sitting as the High Court, succeeds.

[31] In the result, I make the following orders:

 1. The second and third defendants special pleas are upheld;

 2. This Court (sitting as the High Court) has no jurisdiction to determine a matter that falls in the ambit of s 117(1) (d), (g), (h), (i) and s 23 of the Labour Act 11 of 2007;

 3. The plaintiffs are ordered to pay the costs of the second and third defendants.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_

 A DIERGAARDT

 ACTING JUDGE

APPEARANCES

For the Plaintiffs: Mr E Nekwaya (with him Ms A Samuel)

 Instructed by Samuel & Company, Ongwediva

For the First Defendant: No appearance

For the Second Defendant: No appearance

For the Third Defendant: Mr N Mutorwa

 Of Government Attorneys, Windhoek