

REPUBLIC OF NAMIBIA



**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 KAM BONDE	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 PHILLEMOM	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
OTILIE 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
OTILIE NDESHEETELWA NDEMUULA	164th PLAINTIFF
TRESIA ANASTASIU	165th PLAINTIFF
KRONELIA NELAGO KAYUHW	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 KAIKEKELWA 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
SEILIA 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	1 ST DEFENDANT
EVANGELICAL LUTHERAN CHURCH IN NAMIBIA	2 ND DEFENDANT
MINISTRY OF HEALTH AND SOCIAL SERVICES	3 RD 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.

ORDER

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.

JUDGMENT

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 Plaintiffs 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 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 –

- i. any appeal from any district labour court;
- ii. 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