

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA
MAIN DIVISION, WINDHOEK
PRACTICE DIRECTION 61

Case Title: Anna Leonard and Oshana Security Services Applicant Respondent	Case No: HC-NLD-LAB-APP-AAA-2021/00006
	Division of Court: High Court, Northern Local Division
	Heard on: 16 March 2023
	Delivered: 11 April 2023
	Reasons: 17 April 2023

Heard before: Honourable Mr. Justice Munsu

Neutral citation: *Leonard v Oshana Security Services CC* (HC-NLD-LAB-APP-AAA-2021/00006)
[2023] NALCNLD 01 (17 April 2023)

ORDER

1. The Appellant's application for condonation for the non-compliance with the court's orders of 11 April 2022 and 23 May 2022 is hereby refused.
2. There is no order as to costs.
3. The amended notice of appeal filed on 22 July 2022 is hereby set aside.
4. Parties are to file a joint status report on the further conduct of the matter on or before 10 May 2023.

5. The case is postponed to 15 May 2023 at 10:00 for status hearing.

MUNSU J:

Introduction

[1] On 19 July 2021, the appellant filed an appeal against an arbitral award issued by the office of the Labour Commissioner. During April 2022, the appellant saw a need to amend her notice of appeal. To that end, she was to bring an application for condonation for the late filing of the amended notice of appeal.

[2] Pursuant thereto, this court ordered the appellant to file her condonation application by 22 April 2022. The appellant did not comply with the said order. On 23 May 2022, this court ordered the appellant to file a sanctions affidavit for non-compliance with the court order of 22 April 2022. Once again, the appellant failed to comply with the last-mentioned order.

[3] This is an application by the appellant for condonation for the non-compliance with this court's orders dated 11 April 2022 and 23 May 2023.

The application

[4] In her founding affidavit, the appellant Ms Anna Leonard explains that her non-compliance with the court orders was occasioned by her legal practitioner's medical condition. It appears from the appellant's affidavit that her legal representative was indisposed from 05 April 2022 to June 2022. The appellant avers that the application for condonation could not be brought sooner because of the medical condition.

The opposition

[5] The respondent opposed the application. Mr Pieter Jacobus Potgieter, deposed to an affidavit on behalf of the respondent. Mr Potgieter raised an issue *in limine* that the appellant filed her founding affidavit without a notice of motion setting out the relief prayed for. For that reason, Mr Potgieter stated that the condonation application is defective.

[6] In addition, Mr Potgieter states that the appellant, despite being provided with many

opportunities, has on numerous occasions failed to comply with this court's orders. He implores the court to impose sanctions on her.

Submissions

[7] While the respondent maintained that an application for condonation must be accompanied by a notice of motion, counsel for the appellant submitted that such an application is incidental to proceedings or cause already before the court. As such, counsel submitted that an application for condonation need not be made on notice of motion.

Disposal

[8] This is not a proper case in which to determine the respondent's point *in limine*. The reason is that on 23 May 2023, the appellant was ordered to show cause by way of sanctions affidavit, why she failed to comply with the court order of 11 April 2022. A sanctions affidavit need not be accompanied by a notice of motion.

[9] It is trite that an application for condonation should satisfy two requirements of good cause before it can succeed. These entail firstly establishing a reasonable and acceptable explanation for the delay, and secondly, satisfying the court that there are reasonable prospects of success on appeal.¹

[10] The reason for the appellant's non-compliance with the court orders is that her counsel was indisposed. She attached her counsel's medical certificates.

[11] While the court takes note that the appellant's legal representative was indisposed between the months of April to June 2022, the explanation provided does not account for the entire period.

[12] Furthermore, it appears from the appellant's explanation that her counsel appeared in different courts during that period. He was involved in a criminal trial in the Regional Court sitting at Oshakati during the period 11 to 14 April 2022. He was also involved in another criminal trial before this court during the period 18 to 28 April 2022 as well as a civil trial before this court on 5, 10 and 11 May 2022.

[13] Considering the duration of the non-compliance and the fact that the appellant still appeared

¹ See *Balzer v Vries* 2015 (2) NR 547 (SC).

in different courts for trials during the said period, this court does not find the explanation given to be reasonable.

[14] On 27 June 2022, the court ordered the appellant to file, among others, her amended notice of appeal. This should not have been the case as the appellant was first supposed to obtain leave from the court to file the amended notice of appeal.

Costs

[15] This is a labour matter, and counsel for the appellant is instructed by the Directorate of Legal Aid. I do not find the circumstances of the matter to warrant the granting of costs against the appellant.

Order

[16] In the result, I made the order as above.

	Note to the parties:
D MUNSU Judge	None
Counsel:	
Appellant:	Respondents:
S Aingura Of Aingura Attorneys Oshakati	M Amupolo Of Jacobs Amupolo Lawyers, Notaries & Conveyers Ongwediva