

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA
NORTHERN LOCAL DIVISION, OSHAKATI
PRACTICE DIRECTION 61

Case Title: Tarah Nangolo Asser Iyambo Emilia Shimuti and Northern Quality Tombstones & Funeral Services The Labour Commissioner Martha Shipushu	Case No: HC-NLD-LAB-APP-AAA-2022/00005 Division of Court: High Court, Northern Local Division Heard on: 11 August 2023 Delivered: 08 September 2023
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Heard before: Honourable Mr. Justice Munsu	
Neutral citation: <i>Nangolo v Northern Quality Tombstones & Funeral Services</i> (HC-NLD-LAB-APP-AAA-2022/00005) [2023] NALCNLD 02 (08 September 2023)	
ORDER	
1. The application is struck from the roll. 2. There is no order as to costs.	
MUNSU J:	

Introduction

[1] In this matter, the applicants seek condonation for failure to prosecute an appeal within 90 days as prescribed by rule 17(25) of the Labour Court Rules. The applicants further seek a reinstatement of the appeal and extension of the time period within which to prosecute the appeal.

[2] The first respondent opposes the application.

Background

[3] The applicants were all employees of the first respondent. Subsequent to the termination of their employment, the applicants referred a dispute of unfair dismissal to the Labour Commissioner (second respondent). On 09 August 2022, the arbitrator (third respondent) issued an award in which she found that the applicants were retrenched (fairly) and not dismissed. The arbitrator dismissed the applicant's claim.

[4] On 13 December 2022, the applicants noted an appeal against the award. The appeal was filed out of time. To that end, the applicants filed an application for condonation for the late filing of the appeal. This application was not determined.

[5] Meanwhile, the time to prosecute the appeal lapsed. As a result, the applicants filed this application for reinstatement and extension of the period within which to prosecute the appeal.

The application

[6] The applicants aver that they could not take any further steps in prosecuting the appeal because the Labour Commissioner did not dispatch the arbitration record on time. According to the applicants, the record was only dispatched to the Registrar's office on 23 March 2023. The applicants' further state that on 24 March 2023, a notice was received that the appeal lapsed, hence this application.

The opposition

[7] The first respondent filed notice to oppose the application and filed an answering affidavit. The said affidavit was filed out of time and was not signed. Accordingly, the answering affidavit as well

as the written heads of argument are disregarded.

Discussion

[8] Section 89(2) of the Labour Act of 2007 (the Act), makes it clear that appeals against arbitrator's awards must be noted within 30 days after the award is served on the party seeking to lodge an appeal against the said award.

[9] Rule 17(4), stipulate that the notice of appeal must be delivered within 30 days after the award came to the notice of the appellant.

[10] It is common cause that the notice of appeal was filed out of time. Although the application for condonation for the late filing of the appeal was filed, such application was not heard or determined by the court. On 09 January 2023, a notice was issued by the Registrar that the appeal would lapse in 60 calendar days and urged the applicants to take the necessary steps to timely prosecute the appeal.

[11] It seems to me that the reason the applicants did not move their application for condonation for the late filing of the appeal, was because they were awaiting the arbitration record. They merely waited without applying for extension of the period (within which to prosecute the appeal) until the appeal lapsed.

[12] In *Rheeder v CIC Holding (Pty) Ltd*¹ Masuku J, determining an application for reinstatement had the following to say:

[35] Without a successful application for condonation for the late noting of the appeal, the current application is premature and falls to be dismissed on this basis alone. A court cannot reinstate a 'lapsed' appeal, where there, effectively, is no appeal because it was not properly noted.'

[13] The learned judge went further to state that:

[42] In this premises, I find that the applicant's appeal was filed out of time and as such the application for condonation for failure to prosecute the appeal within 90 days as prescribed by rule 17(25) of the Labour Court Rules and for extension of the same period to enable the applicant to set down the appeal for hearing, is of no consequence. There is simply no appeal, properly so-called, to speak of in the instant

¹ *Rheeder v CIC Holding (Pty) Ltd* (HC-MD-LAB-APP-AAA-2021/00006) [2023] NALCMD 1 (16 January 2023).

matter.’

[14] The court went on and concluded, thus:

‘[43] The court can only condone an appeal that has been filed late where a condonation application to that effect has been brought. In *casu*, there is no appeal filed in terms of the Act. As such, the application for condonation and reinstatement of the appeal do not properly serve before this court for adjudication in the absence of an appeal duly noted.

[44] In light of the above, it remains for me to say that there is no appeal before me, as there is no application for condonation for the late noting of the appeal. The court cannot by operation of law condone a non-existent document.’

[15] Although in the present matter, an application for condonation for the late noting of the appeal was filed, such application was not moved nor granted. It cannot therefore be said that there is an appeal. Thus, this matter is not distinguishable from the *Rheeder* matter referred to above. Accordingly, I find that the principle enunciated in *Rheeder* applies equally to this matter.

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

1. The application is struck from the roll.
2. There is no order as to costs.

	Note to the parties:
D MUNSU Judge	None
Counsel:	
Applicants:	1st Respondent:
D Ogundiran Of Jacobs Amupolo Lawyers & Conveyancers Ongwediva	H Steyn Of Maronel Du Plessis Legal Practitioners Tsumeb