

CASE NO.: LC 21/2003

IN THE LABOUR COURT OF NAMIBIA

In the matter between:

NAMIBIAN BROADCASTING CORPORATION (NBC)
APPLICANT

and

ADRIAAN JACOBUS KRUGER & 21 OTHERS
RESPONDENTS

CORAM: DAMASEB, P.

Heard on: 2006.02.15

Delivered on: 2006.02.15

RULING

DAMASEB, P.: [1] This is an application to stay an order of this Court was given on 24th January 2006. Application for leave to appeal was filed after advice was obtained on

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prospects of success on appeal. The application for leave to appeal is yet to be heard. If it fails it is still open to the applicant to petition

the Supreme Court. The application for leave to appeal does not appear frivolous.

In the matter of *Fidelity Services Group Namibia (Pty) Ltd v Piet Prins*¹, **I said the following in relation to an application to stay an order of the District Labour Court (the same principles apply *in casu*):**

“The question arises: in what circumstances will the Court stay execution of the District Labour Court’s order or judgment? As stated by *Herbstein and Van Winson* in the Civil Practice of the Supreme Court of South Africa (4th edn), quoting from *Reid & Another* 1938 AD 511 AT 513 and *South Cape Corporation supra* at 545 B-C:

The foundation of the common law rule as to the suspension of a judgment on the noting of an appeal is to prevent irreparable damage from being done to the intending appellant whether, the damage be done by a levy under a writ, or by execution of the judgment in any other manner appropriate to the nature of the

1 Unreported judgment delivered on 05/08/04 in Case No.: LC/3/2004, at p.13-14.

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judgment appealed from." At p889.

In an application under Section 21(2) of the Labour Act the same considerations will apply. I only need to add that the Labour Court may stay execution of an order or judgment of the District Labour Court if such

order or judgment has been properly appealed against since being handed down, (or the party against whom it has been given has expressed a *bona fide* intention to appeal it); has instituted the steps necessary towards that end, and it would be unjust and inequitable if stay were not granted. In

addition the Labour Court will also be guided by considerations such as the prospects of success on appeal and the balance of convenience between the parties.

The Labour Court should not grant an order staying execution if such stay would be "*an exercise in futility.*" (Compare *Traco Marketing v Commissioner for the SARS* 1998 (4) SA 1002 at 1013 - I.) If there is no appeal pending and the *dies* for filing a notice to appeal had expired, for example, it would be an exercise in futility to grant a stay of execution for its only purpose then would be to frustrate the party in whose favour judgment or order was given."

In a situation such as I have before me where an application for leave to appeal is yet to be heard before another judge, a Court faced with a stay application must be careful about dealing

with the issue of prospects of success, unless circumstances do not allow it to decide the application on any other basis. I have already found² **that there could be irreparable harm to the applicant if execution is not stayed. The application for leave to appeal having been duly filed; it not appearing to be frivolous**

and vexatious and there being evidence that irreparable harm could be done to the applicant if stay is denied, and based on the test that I enunciated above, I grant an order of stay of the order given by Silungwe P on 24th January 2006.

DAMASEB, P.

2 In the ruling in this same matter when the point was raised in limine that the matter is not urgent.

ON BEHALF OF THE APPLICANT

Mr G

Coleman

Instructed by:

Ellis &

Partners

ON BEHALF OF THE RESPONDENT

Mr Z

Grobler

Instructed by:

Grobler &

Company